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THE ELEMENTS OF CRIME

(PSYCHO-SOCIAL INTERPRETATION)

BY

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Ubi societas,—ibi jus;
ubi jus,—ibi crimen.

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To

THE MEMORY OF

LEO BRASOL, M. D.

MY BELOVED FATHER

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PREFACE

Among the vital problems confronting civilized mankind, the sinister phenomenon of criminality occupies a prominent place and engages, on the part of both the jurists and the general public, ever-increasing attention towards its scientific solution. Modern thought is no longer content with the scholastic interpretation of crime based upon abstract legal formulas inscribed in penal codes, but it seeks to explain the complex nature of the criminal deed in the light of the latest discoveries of sociology, biology, psychology, anthropology and economics.

Positive criminology had departed — and therein lies its great achievement — from the traditional path of the classical school which dealt with crime quite apart from the realities of every-day life, this metaphysical conception reducing the whole study of criminality to a purely formal and legalistic analysis.

In our day, too, the juridical aspect of the delinquent act forms an important portion of criminology. Only we do not confine ourselves to the technical phase of the study, because the basic fact is now recognized that criminal phenomena are functions, *sui generis,* of the social structure itself, while, on the other hand, they necessarily have an individual background in the physical constitution and psychic impulses of the criminal.

The social nature and the sociologic notion of crime have been discussed at length not only by the prominent scientists of the Italian School, with Lombroso and Garofalo, its leading spirits and master-minds, but also by the French, German, Russian and Anglo-Saxon criminologists, such as Tarde, Liszt, Dril, T. D. Eliot, Havelock Ellis, Sutherland, and a number of others.

Thus, extending the scope of its inquiry into the realms of social and natural sciences, modern criminology endeavors to

find the *underlying* cause of criminality, instead of merely registering its *external* manifestations.

Experimental psychology and psycho-pathology, perhaps more than other scientific disciplines, are rendering priceless services to the criminalist of our age, enabling him to examine the inner mechanism of the criminal act in its development and growth.

While these clinical observations are of great theoretical importance, oftentimes they furnish the jurist with equally reliable data on the practical problem of the *corpus delicti* and the imputation of the particular criminal deed. Here, then, criminology has to pass on one of the most difficult questions relating to crime, namely, its motive.

The correct understanding of the criminal motive:

a. reveals the object of the punishable deed;
b. gives a logical starting point to the judicial investigation, and
c. determines the means of social defense which, in the specific instance, ought to be adopted by the state.

Sometimes, the very absence of a clearly defined motive throws an entirely new light upon the criminal act itself, leading the investigator to look for its logical solution in the domain of pathology.

However, criminology must be guarded against the unfortunate tendency — so pronounced in Italy and the United States — of exaggerating the part of mental disorders in the perpetration of crimes. In point of fact, modern society is facing a serious condition which may be described as "the rising tide of professional criminality." In many European countries and the United States the number of atrocious crimes is steadily increasing. Efficiently organized banditry has declared war on the peaceful population, murder having become a common happening in the daily records.

It often can be noticed that the attorneys for the defense, assisted by hired alienists, exert their efforts to convert typical criminal cases into cases of dementia, or amentia, for the sake of insuring impunity of the criminal. As Baron Raffaele Garofalo justly remarked:

" In the popular view, the substantive law, procedure, and the judicial power itself too often seem to work in combination for the protection of the criminal against society rather than society against the criminal." [1]

Naturally, safeguarding society against criminality is the foremost duty of the state. In addition, crime must be repressed and the criminal punished not solely as a measure of self-defense, but as a means of upholding the authority of the social order. In this connection it should be borne in mind that the act of punishment is but the concluding stage of criminal procedure, while its first task is the investigation of crime and the detection of the offender.

It may seem a paradox, and yet it is true, that no line of human " endeavor " is progressing as rapidly as criminality. The modern criminal, especially of the habitual class, is fully equipped with all the latest devices of technique, and, consequently, criminal activities have assumed a highly proficient, and, at times, strictly scientific character.

In days gone by, murders, for instance, as a rule, were performed in a rather simple and crude fashion. Not so at present: homicide is often accomplished by the adoption of scientific methods, requiring profound knowledge of chemistry, biology and bacteriology. Such are the murders committed by means of injecting deadly bacteria into the body of the victim. Likewise, the latest forgeries demonstrate the fact that falsifiers are resorting to the most " progressive " photo-mechanical and graphic appliances, with the result that bills and bonds, today, can be counterfeited almost perfectly.

It is to be regretted that the methods of investigating crimes have not kept pace with the methods of performing them. In all too many cases, government authorities are still dwelling in the phantasmic atmosphere of super-detectives of the Sherlock Holmes type, who are supposed to know *everything* even before *it* happened, and whose principal investigative asset seems to be that rather mysterious faculty of " intuition "

[1] Baron Raffaele Garofalo, " Criminology," author's preface to the American Edition, p. xxix, Boston, 1914.

which, like an X-ray, penetrates under the thief's skin. Bernard DeQuiros calls this the *empirical* phase of investigation as distinguished from and opposed to the *scientific* method.[2]

However erroneous the belief in the "super-detective panacea" may be, it seems to have captured the imagination of amateurish "criminologists" and has helped to entrench inefficacy in the field of criminal research.

Modern science justly stresses the criminogenic effect of this state of affairs, and more particularly emphasizes the unreliable character of oral testimony which, *as a rule*, is neither trustworthy nor correct. Even confession, which Enrico Ferri ironically calls "the queen of proofs," is often deliberately false. These facts lead the present-day criminologist to seek the solution of the investigative problems in the systematic study of those *material* symptoms and changes which *every* crime produces in the world of physical phenomena.

In this volume no attempt is made to discuss *in extenso* the subject of criminal investigation, and the reader interested in this particular aspect of criminology, should familiarize himself with the brilliant works of Hans Gross, "*Handbuch für Untersuchungsrichter,*" R. A. Reiss' "*Manuel de Police Scientifique,*" S. Tregouboff's "*Criminal Tactics*" (in Russian), Lacassagne's and Martin's "*Précis de Médecine Légale,*" Albert S. Osborn's "*Questioned Documents,*" C. A. Mitchell's "*The Expert Witness,*" and many other books which have been published on this subject during the last two or three decades.

Nor shall I deal with the important question of punishment and prevention of crime.

It might be mentioned, in passing, that contrary to the views expressed by certain Italian writers, not the weakening of social defense, but its scientific consolidation, is the great problem of our age. "Social Hygiene," as advocated by socialists, may be quite in conformity with the Marxian dogma, according to which criminality is merely the functional

[2] Compare Bernard DeQuiros, "Modern Theories of Criminality," p. 208, Boston, 1912.

result of economic inequality, so that the abolition of the capitalistic régime would automatically eliminate crime, as though by magic. But from the practical standpoint of government, the socialistic thesis cannot be seriously entertained. It is impossible for society to wait until the problematic blessings of a socialistic Utopia will have done away with the numerous manifestations of criminal psychology. Besides, statistical data gathered in Soviet Russia, a country in which capitalism has been abolished, prove the fact that criminality in general, and juvenile delinquency in particular, instead of disappearing from the social stage, have penetrated all the pores and fibers of the nation.

In this treatise it is sought to inquire into the nature of crime itself. There is still much to be learned in this field: The genesis and development of the criminal propensity; the social factors contributing to its structuralization; the inner mechanism of the growth of the criminal intent; the psychic contents of the delinquent act; the problem of criminal responsibility in cases involving the issue of insanity, and a number of other equally important problems, are still awaiting solution. So long, however, as the nature of crime continues to be obscure, the various experiments in the realm of social hygiene and prevention of crime are, in a large degree, derived from " guess work " and promoted by philanthropic sentimentalism.

It seems that crime, as any other social phenomenon, deserves to be treated scientifically, *sine ira et studio,* without undue emotionalism, which only tends to becloud the practical issues connected with the problem of delinquency, and sometimes leads to tumultuous alarmism.

This volume is divided into two parts; Part I deals with the examination of the more important social causes of criminality, while Part II is devoted to psycho-physical characteristics of the criminal.

Of course, this book does not purport to present an all-embracing study of the subject. I shall consider my task fulfilled if some of my observations are found helpful in determining the nature of crime and understanding the intricate psycho-social mechanism which is responsible for the origina-

tion of a phenomenon menacing the welfare and safety of both individual citizens and society as a whole.

I feel it my duty to express profound gratitude to Dean John H. Wigmore, not only for introducing this book to the American public, but equally for the great assistance which he rendered in the final arrangement of the text and the many valuable suggestions which he made regarding its substance. Owing to his vast scientific experience, every idea which he expressed with reference to the problems discussed in " The Elements of Crime " proved of real benefit to me, enabling me to improve in various respects the general outline of my study.

In an equal degree I am indebted to Professor Robert H. Gault, who gave much of his time and attention to the reading of the book in manuscript form; his learned advice has been likewise responsible for important changes in the text.

It is a great privilege to have here the generous comments of Dr. William A. White on the place of my work in criminological literature. His encouraging remarks, coming as they do, from a distinguished psychiatrist who has taken a singular interest in the manifold ramifications of the phenomenon of criminality, vindicate my hope that " The Elements of Crime " may also receive a favorable reception among those belonging to the medical profession, more particularly, the alienists.

Finally, I have to thank Mr. Franklin F. Russell, of the Brooklyn Law School, for the criticism and revision of this work.

BORIS BRASOL

September, 1927

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INTRODUCTION

By John H. Wigmore[1]

When in 1909 the American Institute of Criminal Law and Criminology was founded, the theory of its existence was that Criminal Science formed a distinct field of research and knowledge; and that the main purpose of the Institute was to unite in that study all the different branches of experience that had hitherto remained unassociated. This experience was represented by the legal profession (legislators, judges, professors, prosecuting attorneys), prison officials, police officials, sociologists, social agencies, statisticians, and psychiatrists. The combination of these branches of experience was necessary for reaching solid and complete solutions in practical measures.

Since that date, the progress of the science in the United States, furthered by numerous treatises and by the valuable records published in the *Journal of Criminal Law and Criminology,* has been remarkable for copiousness of material.

But, naturally, the coördination of these various branches of experience has been slow. Each specialist has tended to preserve his own professional point of view. Few have been qualified or willing to take the catholic and comprehensive attitude.

Among these specialists, the psychologists have been the most active in emphasizing their principles. The scope of modern experimental psychology is comprehensive. But those of its specialists who have sought to apply their principles to the study of criminal justice have rarely emerged from their narrow specialist point of view. They have seldom taken into consideration the established experience of criminal law, when they have proposed changes of law to give effect to their own doctrines. Yet the criminal law has an experience vastly older than modern psychology. And the literature of the theory of criminal law is as bulky as that of the psychologists and

[1] Professor of Law in Northwestern University; former President of the American Institute of Criminal Law and Criminology.

psychiatrists. How many psychiatrists have taken the trouble to become acquainted even with Von Bar's summary of the theories of Criminal Law, in his "History of Continental Criminal Law," 1916?

The theory of many psychiatrists as to the function and operation of criminal law is revolutionary. If applied in practice, it would result in a complete reconstruction of everything, — law and procedure alike. As some of us think, it would undermine law and order, and lead eventually to a virtual criminal anarchy. Nevertheless, in certain incipient directions some of these specialists have not hesitated to demand the acceptance of their views in the law. And their demand has been copiously propagated to the public in recent years. Intelligent public opinion, especially in influential quarters, has begun to accept it. To contest or question this one-sided exposition of theory by psychiatrists, little has been offered.

In this situation what the times need is an exposition which will take into account both points of view, — will synthesize them pragmatically, — will reconcile for us the principles and experience of psychology with the principles and experience of criminal law.

That situation is met by the present book.

The author brings to its composition a long practical experience in administration of the criminal law, yet with none of the limitations of the mere lawyer in his horizon. He brings to it a thorough mastery of the literature of modern psychiatry, yet freed from the bias of the psychiatrist inexperienced in law. Additionally, he takes full account of the contributions of anthropology and sociology to the problem of criminal repression; and in general brings to bear a comprehensive acquaintance with all sources of relevant data. In every chapter he reveals a broad and balanced judgment.

We may therefore hope that this work will receive wide and candid consideration by the specialists in all these fields. May it exercise a wholesome influence in reconciling their conclusions and in bringing about a union of forces to effect needed improvements in the law of the future!

October 1, 1927.

INTRODUCTION

By William A. White, A.M., M.D.[1]

The appearance of Mr. Boris Brasol's book on *The Elements of Crime* (A Psycho-Social Interpretation) is peculiarly timely just now when the whole crime problem looms up so prominently and when particularly the public press and the popular magazines are printing numerous articles on the subject calling attention to the defects in our legal, judicial and penal systems and crying for remedies. The net result of these articles seems to be to express alarm at the state of affairs disclosed, and a mental state of confusion on the part of most of the writers as to the real nature of the problems involved, and the direction in which solutions should be sought. The remedies that are suggested for the most part follow the lines which have been pursued in the past and suggest more laws, more rigid enforcement and severer punishments, without adequate appreciation of the facts that more laws oftentimes mean more crimes, that increased severity of punishment has by no means always justified itself, and that, more important than all, such measures may easily serve only to render more complex a social system which is already so infinitely complicated that it is becoming well nigh impossible to find one's way about in its maze of intricacies.

It would seem that the time is ripe for bringing to bear on the problems of crime those scientific principles which have proved their usefulness in other departments of learning, namely, to investigate the natural history of crime, its causes and its manifestations, its meaning and the various factors involved and in particular those factors which are modifiable for purposes of cure or pervention. For these purposes approved scientific methods need to be brought into service, and where existing scientific methods are inadequate or lacking, new methods need to be evolved. In medicine, for example, quinine

[1] Superintendent, Saint Elizabeth's Hospital, Washington, D. C. Author of "Insanity and the Criminal Law," etc.

has been used for many years to reduce the temperature in fevers but the specific relation between quinine and malarial fever had to wait upon the scientific identification of malaria by a microscopic examination of the blood and the isolation of the malarial parasite. To have insisted upon increasing doses of quinine in an unidentified fever would be like insisting upon increased severity of punishment in a situation where punishment might not be the sole curative agency.

Our judicial system is hampered today by having to deal with infinitely complex problems, by methods which were devised generations ago and are altogether too few and too simple to be longer expected to meet these situations. What is needed is a re-evaluation of the concepts which have heretofore been controlling; their examination and modification to meet conditions as they are today; careful scientific study and evaluation of all the factors involved to the end that scientific laws of behavior, individual and social, be disclosed, instead of further complicating the picture and rendering confusion twice confounded. This would serve to simplify the matter, and by so doing, reëstablish the whole crime problem upon a firmer basis more in line with present-day scientific attainments.

Advance in culture and civilization can not take place solely by the method of addition, which only increases complications, but must be relieved, from time to time, as the result of the discovery of natural laws which by grouping various phenomena in a single formulation have the result of amazingly simplifying the whole field and making it much easier to deal with. The law of gravity brought together in such a simplification such diverse concrete facts as the falling of a stone, the phenomena of floods and tides, and the mechanical relations of our solar system. It is this sort of simplification which the field of criminology is very much in need of today in order to meet the demands that have been made upon it by the rapidly increasing complexity of the past century of scientific progress.

Mr. Brasol's book is an outstanding contribution to progress along these suggested lines. He has undertaken to cover the field only in certain of its aspects, more particularly with reference to the social causes of criminality and to the psycho-

physical characteristics of the criminal. He definitely leaves out of his discussion the subject of criminal investigation and the important questions of punishment and prevention. From these standpoints, however, he has contributed a mass of valuable material, legal, social, anthropological, psychological and philosophical, much of which is naturally controversial but all of which is provocative. He brings to the treatment of his subjects a large personal experience as a former Prosecuting Attorney of the Saint Petersburg Supreme Court, and his discussions and disclosures in this realm serve to illuminate the social and psychological factors in criminal groups and criminals, which give the sort of information that is highly important to record, as the people at large have really very little understanding of criminals as a class, just as they have little understanding of other statistical groups in the community which to them are largely alien.

Another feature of the book is its very excellent digest of the law and procedure in various European countries, particularly Russia, with which the author is naturally more familiar.

With the increasing interest in this country in problems of crime, as evidenced by the amount of space devoted to the subject in the press and in popular magazines, and the appointment of crime commissions, and the consideration of ways and means of dealing with crime by legislatures, and the enactment into law of the results of their deliberations, it is very fortunate that a serious study such as Mr. Brasol's psycho-social interpretation should be projected in book form. It deserves a careful and thoughtful reading by all those interested in the subject, and particularly by those who are at present engaged in its study, especially those who are endeavoring to bring to pass better conditions based upon better understandings and better solutions.

PART I

CRIME AS A SOCIAL PHENOMENON

CHAPTER I. — PRELIMINARY DATA

1. Field of Inquiry. 2. Crime, Attempts of its Definition. 3. "Natural Crime." 4. Public Opinion — Alleged Agency of Determining the Concept of Crime. 5. Crime and Social Altruism. 6. Sociologic Notion of Crime. 7. Historical References. 8. Crime as a Social Phenomenon. 9. Crime and the State. 10. Social Friction. 11. Destructive Nature of Crime. 12. Crime in its Legal Aspect. 13. Criminals — Habitual and Occasional. 14. Criminal Psychology Illustrated by Dostoievsky's "Crime and Punishment." 15. Genesis and Growth of the Criminal Intent in Raskolnikov. 16. Last Warning. 17. Egocentricism in Habitual Crime. 18. Habitual Criminal and "Criminal Type." 19. Cranial Data and the "Criminal Type." 20. Indeterminate Character of Anthropological Symptoms. 21. Morbid Heredity and Criminal Type. 22. Moral Degeneracy in Habitual Criminals. Relativity of Ethical Concepts of Crime. 23. Racial Differences and Garofalo's "Perfected Type." 24. Crime as an Integral Part of Society itself. Social Friction — Fundamental. 25. Social Friction — its Psychologic Background. 26. Excessive Friction — Social Cause of Crime. 27. Crime — Willful Attempt Against the Social Order. 28. Crime in its Sociologic Sense — defined.

1. Field of Inquiry. Criminology belongs to that branch of social sciences which deals with crime in general, analyzing both its social causes and inner, or psychic, contents. As such, criminology embraces the following principal subjects:

a. Crime
b. Criminals
c. Criminality
d. Scientific Investigation of Crime
e. Criminal Procedure
f. Punishment
g. Prevention of Crime.

In this volume we shall confine ourselves to the examination of the first three elements only (*a*, *b* and *c*), which, in fact, represent but different phases of one and the same fundamental conception. Now and then, in the course of the discussion, it becomes necessary to touch upon some particular point of criminology which does not enter into the field of our imme-

diate interest. In Chapter VI, for instance, reference is made to the methods of criminal investigation, in their relation to the increase or decrease of criminality. On the other hand, the jury system (criminal procedure) must be alluded to in connection with the problem of criminal responsibility (Chapter VIII). Equally, the question of punishment is brought up when its effect upon the formation of criminal habits is considered (Chapter VI). But the prime object of our study is to gain a clear understanding of crime itself, that is, its nature, genesis, growth and outward manifestations.

It was sought to make the arrangement of the work as simple as possible by drawing a line of demarcation between the social characteristics of criminality (Part I) and its more complex psycho-physical symptoms (Part II). In this way, the exposition of the main theme, we hope, is made sufficiently systematic and convenient to follow.

Even within the narrow limits thus set forth, the inquiry entails many difficulties which, it is felt, cannot be properly understood and adequately met without the aid of psychology, psychiatry, biology, ethics, jurisprudence, economics and scientific disciplines, coming under the heading of sociology. To these departments of human knowledge the attention of the reader is frequently directed, although the solution of their special quests and queries, naturally, does not belong to the province of criminology.

2. Crime, — Attempts of its Definition. The first, and possibly the main difficulty which the student of criminology encounters is the absence of any commonly accepted definition of the term crime.

Most of the authors give some classification of criminal deeds or investigate their causes, without determining the concept of crime by its precise properties. To cite but few examples: Lombroso, in his classical book, "*Crime, its Causes and Remedies*," while scrutinizing the climatic, physical and social factors which produce the intricate phenomenon of criminality, refrains from setting forth his definition of crime.

Dr. Edmond Locard, Chief of the Lyon Police Laboratory, in his latest volume, "*Le Crime et les Criminels*," merely enu-

merates the various kinds of delinquency, describing their "professional" characteristics.

Again, Havelock Ellis, the distinguished English criminologist, following the principles of the anthropological school, presents a brilliant survey of the physical and psychical anomalies observed in the criminal type, but he, too, does not attempt to define the meaning of the word crime.

Russian criminalists, especially Tagantzev, Foynitzky, and Sergievsky, have dealt with crime mainly in its formal, or judicial, aspect, and, consequently, their theories do not graphically reveal the essential traits of that phenomenon, in the broader sociologic sense.[1]

Next, we find those scientists who restrict their inquiry to the analysis of the practical methods used in the detection of crime. Their combined labors form a new and rather important branch of modern criminology, which Professor Reiss calls "*Police Technique*" or "*Police Scientifique.*" Bertillon, Hans Gross, Tregouboff, Lacassagne and other eminent representatives of this school, naturally, do not seek to dwell upon the theory of crime.

On the other hand, socialist writers, like Loria and Turati, whose sociological conceptions are derived from the Marxian thesis of materialistic determinism, have no scientific definition of crime to offer, because of their belief that crime is but a form of protest against social inequality, or a manifestation of class-rebellion. In fact, what notion of crime can be expected from a writer who maintains that "the rich must be placed under the ban of the *jus gentium*. . . . Any manner of attack upon them is justifiable, not excluding fire or sword or even false witness." [2]

Much in the same way, Tolstoy, who proclaimed the principle of non-resistance to evil, was unable to denote crime otherwise than by referring to an ethical paradox "*Crime is punishment, — Punishment is crime.*"

[1] Among Russian criminalists adhering to the sociologic school the following should be particularly mentioned: A. F. Koni, Prof. M. P. Tchoubinsky, author of "Manual of Penal Policy," and Prof. M. N. Gernet.

[2] Program of the "Black Hand" in Laveleye's "*Le Socialisme Contemporain,*" p. 275 in Garofalo's "Criminology" p. 143, Boston, 1914.

3. "Natural Crime." Baron Raffaele Garofalo, realizing the basic fact that science, so far, has failed to evolve a scientific notion of crime, elaborated his remarkable theory on "Natural Crime," with its deviation from, or violation of, the constituent instincts of the moral sense, which, he believes, is characteristic of a criminal act. To put the formula in his own words:

". . . the element of immorality requisite before a harmful act can be regarded as criminal by public opinion, is the injury to so much of the moral sense as is represented by one or the other of the elementary altruistic sentiments of *pity* and *probity*. Moreover, the injury must wound these sentiments not in their superior and finer degrees, but in the average measure in which they are possessed by a community — a measure which is indispensable for the adaptation of the individual to society. Given such a violation of either of these sentiments, and we have what may properly be called *natural crime*." [3]

It can be easily seen that Garofalo tends to explain only the sociologic phase of crime, leaving aside its other aspects, such as legal, psychological and psycho-pathological. But even within the set limits, this definition raises a number of serious questions and objections.

4. Public Opinion — Alleged Agency of Determining the Concept of Crime. In the first place, we note that the task of determining whether an act should or should not be considered a crime is entrusted to "Public Opinion" which is obviously an uncertain and indefinite agency. It is a well known fact that virtually on every matter of importance public opinion is divided, and in our day, among civilized nations, we can hardly imagine a condition of unanimity on any problem entailing ethics and similar abstract propositions.

But regardless of this practical difficulty, the general question may arise: What is public opinion? — The plain statement that public opinion is equal to public sentiment, just as the equation $x = x$, explains nothing. Public sentiment is in no way a precise conception. In order that it be made part of a definition it would be necessary to agree, at least,

[3] Baron Raffaele Garofalo, "Criminology" pp. 33, 34, Boston, 1914. Author's italics.

on the mode of its expression. Indeed, what apparatus does actually express or interpret public opinion? — Is it the press? — Or, is it more correctly exhibited by literature? — Or, shall we accept the parliamentary vote as the gauge of public sentiment? — Or, perhaps, the more perfect method of revealing public opinion is to be found in a popular referendum, and, if so, — how should it be constituted?

If, however, none of these modes represents the accurate measure of public sentiment, — then should we not try to disclose in legislation and the opinions of the jurists the genuine utterance of the popular view on crime? — But Garofalo explicitly states that "natural crime" does not or may not coincide with its legal conception. In the opening lines of his chapter on this subject he says: "By no means every person who is an offender according to legal standards answers the description of the naturalists' criminal man" . . .[4]

Still less can we accede to that part of Garofalo's theory in which he stipulates that the injury to the moral sense be recognized as such, not by the sentiments, "in their superior and finer degrees," but in the average measure possessed by a community. Were we to adopt this view, it would be necessary to admit that, for instance, incest is not criminal in certain regions of Russia, where even now it is widely practiced among the peasants, constituting probably a peculiar survival of the ancient *jus primae noctis*. From this standpoint, too, *bloody feud, vendetta* or *"Kentucky feud"*, accompanied by acts of violence and premeditated murder, which is still flourishing among the various Eastern tribes, can hardly be called criminal.

Further, there are many repulsive customs which the average person, in almost every community, simply ignores; consequently, they do not injure the moral sense at all. Nevertheless, they are justly listed as crimes in the respective penal codes. Thus, petty graft in some of the Latin countries, or the "bakshish" habits in Turkey, are considered the most

[4] *Ibidem*, p. 3. On the question of public opinion many prominent writers have given their views. Most of them, however, seem to adhere to the belief expressed by Dr. John M. Mecklin in his volume "An Interpretation of Social Ethics" (N. Y. 1920) that "the term public opinion is notoriously vague."

natural and innocent things; still, both sociology and law recognize the fact that bribery, like any other form of extortion, bears all the characteristic traits of crime.

5. Crime and Social Altruism. Nor can we, despite Garofalo's assertion, regard the sentiment of social altruism as some sort of sociologic dogma. Of course, sporadic instances could be cited which would tend to corroborate the presumption of the existence of an altruistic instinct possessed by a large community. Indications of a social sentiment of this kind can be revealed in the universal practice of caring for the wounded, charitable undertakings in general, protection of the young, and so forth. More conspicuous manifestations of the same nature are traceable in the gallant work of the firemen, daily risking their lives; the heroic behavior of Russian sailors during the Messina earthquake; or some splendid achievements, like that of Captain Fried and the crew of the "President Roosevelt," who, during a terrific storm in the North Atlantic, rescued the crew of the "Antinoe," and similar courageous acts. Still, these altruistic symptoms are offset and contradicted by *polar* sentiments of the most brutal nature, leading to the wholesale massacres of the Armenians in Turkey, lynching outrages in the United States, systematic terrorism in Soviet Russia and other forms of mob action.

It should be also remembered that social progress does not necessarily eliminate cruel instincts so that from a strictly scientific standpoint it is an error to couple the basic idea of "natural crime" with an arbitrary idea, such as "the elementary altruistic sentiments of pity and probity."

The definition of a name, according to John Stuart Mill, "is the sum total of all the *essential* propositions which can be framed with that name for their subject." [5] Logic draws a distinction between the definition of a name and, what is erroneously called, the definition of a thing. For our purpose, however, it suffices to state that Garofalo's description of the term "natural crime" (which is rather a postulate than a name in the sense used in logic) is both arbitrary and incor-

[5] John Stuart Mill, "System of Logic," p. 87. London, 1911. Author's italics.

rect: It is founded upon an abstract presumption (altruistic sentiment of pity and probity), and not upon a sociologic fact and is made dependent upon the existence of a fictitious agency (public opinion), whose very modes of functioning remain undetermined. It, therefore, becomes impossible to draw the sum total of the *essential* propositions which can be attributed to the name " natural crime," as set forth by Garofalo, which, in turn, means that we are again confronted with the absence of any definition of that term.

6. Sociologic Notion of Crime. Nevertheless, Garofalo, Ferri and other modern criminologists are quite justified in their endeavors to establish the *sociologic* notion of crime, as distinguished from the scholastic theory which dealt with the punishable transgression as a mere legal abstraction.

Crime, being a permanent social phenomenon, naturally, should be treated by science as such. It seems only that the reaction of modern criminology against legal scholasticism has led to another extreme — the tendency to abstract from crime that which in civilized society signifies its very existence, namely, its legal film.

This trend of thought, particularly noticeable among the writers belonging to the positive school, may perhaps be explained by the desire to draw criminology nearer to sociology, making the former, more or less, independent of the science of criminal law. However, if it was a mistake to study crime, regardless of its social background, it equally is a fallacy to examine crime as a social fact, apart from its legal construction. Not only is this method incorrect, from the standpoint of criminology, but it hardly adds anything to the prestige of sociology itself.

7. Historical References. It is true, of course, that social conditions either generate crime, or bear a strong influence upon criminality; but the fact should not be overlooked — and its significance underestimated — that the legal systems themselves are the outgrowth of social conditions, while legislation (with its penal laws), like a mirror, reflects the whole range of the prevailing economic relations and cultural forms. Every significant change in the social structure inevitably

finds its formal expression in corresponding legislative acts; on the other hand, the enactment of new laws causes profound permutations in the organization of society, its modes and habits of living.

We shall cite here only two examples:

1. The Imperial Manifesto of February 19, 1861, by virtue of which the peasants in Russia were liberated, had a strong effect on Russian national life as a whole, paving the way for a series of social innovations, including universal military conscription which did away with the recruiting system; the institution of the Zemstvos (local self-government); the fundamental Court Reform of 1864; the abolition of censorship; and many other measures which, combined, constitute what is known in the history of Russia as " The Epoch of Great Reforms."

2. On the Thirteenth Amendment of the Constitution of the United States, adopted on December 18, 1865, a Federal Court said:

" It trenches directly upon the power of the States and of the people of the States. It is the first and only instance of a change of this character in the organic law. It destroyed the most important relation between capital and labor in all the States where slavery existed. It affected deeply the fortunes of a large portion of their people. It struck out of existence millions of property. The measure was the consequence of a strife of opinions, and a conflict of interests, real or imaginary, as old as the Constitution itself. These elements of discord grew in intensity. Their violence was increased by the throes and convulsions of a civil war. The impetuous vortex finally swallowed up the evil, and with it forever the power to restore it." [6]

The Thirteenth Amendment having been adopted, Congress was given power to enforce it by appropriate legislation. Accordingly, under this constitutional authority, Congress enacted a number of statutes prohibiting the employment of peon labor, etc.

It may be truly said that the connection between social

[6] Quoted in Thomas James Norton's " The Constitution of the United States; its Sources and its Application," p. 233, Boston, 1925.

conditions and the particular legislation is a fact which can neither be denied by sociology nor ignored by jurisprudence.

The affiliation between law and social conditions is engaging ever increasing interest on the part of the modern jurists themselves. Thus, Dean Roscoe Pound of Harvard, in his volume, "*The Spirit of Common Law*" referring to the factors which shaped American Common Law, mentions the following:

1. An original substratum of Germanic legal institutions and jural ideas;
2. the feudal law;
3. Puritanism;
4. the contests between the courts and the crown in the seventeenth century;
5. *eighteenth-century political ideas;*
6. *the conditions of pioneer or agricultural communities in America in the first half of the nineteenth century; and,*
7. *the philosophical ideas with respect to justice, law and the state that prevailed in the formative period in which the English common law was made over for us by American courts.*" [7]

Whether this be an exhaustive summary of the historic elements which evolved the system of American Common Law in its present status, is a matter that need not be discussed here.[8]

The essential point is that Dean Pound recognizes the fact that the legal system prevailing in the United States, is not an arbitrary scheme, invented or devised by a group of lawyers and thereupon tacitly adopted by the community, but a complex social phenomenon, the roots of which are deeply planted in the historic sub-soil of the nation, its philosophy, politics and economics.

What is true of Common Law is equally applicable to statutory law. For instance, the *Code Napoléon,* although founded upon the eternal principles of Roman Law, strongly reflects the mass of philosophical ideas, political tendencies and social

[7] *Op. Cit.* pp. 14 and 15, Boston 1921. Italics ours.

[8] We feel personally that to the factors mentioned by Professor Pound, the racial aspect should be added, inasmuch as the early settlers, most of whom belonged to the Nordic races, brought with them strong individualistic tendencies which are so typical of the Common Law tradition.

changes originated by and evolved as the result of the French Revolution. This Code, further, is a compromise between Roman Law and the Germanic legal concepts, — a fact which is due to the conquest of purely German territories by Napoleon.

Roman Law itself, in both its principal ramifications — the *jus civile* and the *jus pontificum* — was the compound function of the whole history of Rome, the flexible prætorian edicts having served as means of adaptation of the statutes to the continuous changes in the social structure of that Empire.

In other words, it is an error, at least from an historical standpoint, to dissociate a legal system, including its penal laws, from the whole gamut of social factors and relationships. Law, being an organic part of the latter, has also a retroactive effect upon the organization of society, and in this sense it is both a *sociologic* and a *socionomic* actuality.

8. Crime as a Social Phenomenon. With reference to criminology there is a further consideration to be taken into account.

Whatever our general conception of crime may be, the fact will not be denied that, being a social phenomenon, crime becomes a reality only when society has reached a certain measure of political organization which makes it possible to establish a commonwealth, irrespective of any particular form of government. Until that stage has been achieved, crime, either as a sociologic notion or as a legal experience, is inconceivable.

So long as the state is non-existent, there can be no organized social life nor public authority; there can be no legislation, whether civil or criminal; there can be no social ethics, and, consequently, — there can be no crime in the sociological sense of the term.

9. Crime and the State. Even if we should accept as an axiom Professor Sutherland's theory of crime as a "social situation" resulting from the non-appreciation by one social group of those values which are appreciated by another social group "politically important" and possessing the power to resort to coercion "decently applied" to those who disregard the

value,[9] — even then we will find in this vague formula a carefully veiled presumption of the existence of a state; for it is only in its presence that we encounter:

a. organized political groups,
b. the power of organized coercion, and
c. the "decent application of coercion,"

which, using clearer language, is nothing else but the administration of criminal justice. This being so, we are again confronted with a broad legal construction, which, as we sought to explain, is not in contradiction to, but quite in conformity with, the sociologic notion of crime.

10. Social Friction. In a way of comparison, human society may be viewed either as an *organism* or as a *mechanism*. Both analogies — the organic and the mechanic — presuppose a unit functioning in a manner making the life or the motion of the unit dependent upon the proper functioning of its parts. It is evident that society is neither an organism nor a mechanism; nevertheless, for practical purposes it is legitimate to carry the analogy one step farther by pointing out to the fact that within an organized social group, as in a mechanism, useful motion corresponding to biological growth in an organism, is to a certain degree hampered by opposing forces, such as friction in the world of mechanical phenomena, or pathological disturbances in the physical condition of a human being. Friction and disease are natural things, motion being inconceivable without friction, and organic life — without certain interruptions of and deviation from normal evolution.

11. Destructive Nature of Crime. Likewise, in the being of society, constructive labors, tendencies and efforts are constantly counteracted by destructive forces trying to interrupt, pervert or destroy some vital functions, thus imperilling the integrity of the social constitution itself. Sometimes, such a ruinous energy is a blind physical force, (earthquake, plague, fire, etc.), while in other instances, the undermining activities are marshalled by and directed against men themselves, —

[9] See Edwin H. Sutherland's "Criminology," p. 21, Philadelphia, 1924.

members of the particular social group, state or nation — and then they come within the province of sociologic investigation.

Crime, as a social phenomenon, is a destructive anti-social force, harmfully affecting the individual, society and the state, or all these elements combined.

The growth and perfection of a social organization is accompanied by a corresponding tendency on the part of the state to bring every social function within the limits of a specific legal expression. On the other hand, the molecular activities of an individual become more and more part of the general social development, with the result that the state deems it its duty to protect the individual to the same degree that protection is accorded to society as a whole. For this reason the violation of individual rights in organized society is followed by some form of legal reaction emanating from the state.[10]

12. Crime in Its Legal Aspect. The interrelation between the social order and law has been thus interpreted by the late Professor N. Korkunov:

"... the life and development of the combination depend upon the preservation and due development of the separate factors which make up society. An exclusive development of one factor may easily take place in a way to be injurious to the activity of other factors and interfere with the regular functions of the society as a whole. So far as concerns a mechanical aggregate the bond connecting its parts is a material one. It is a mechanical arrangement which co-ordinates the functions of the several parts. But as regards society, whose principle of unity is psychic, the activity of its different elements must be co-ordinated by some different process. *The factor*

[10] Among the primitive tribes which have not succeeded in evolving any state organization, social friction can be also witnessed; however, it is largely confined to individual strife, so that the violation of some personal interest results in a personal reaction against the transgressor by that member of the tribe on whom an offense was wrought. The tribe as a whole, usually takes no part in the repression of the offense, since at these low stages of civilization the idea of the community of interests is dormant. Even when the chieftain of the tribe is attacked by some rival member, the attack is considered a personal feud between the two individuals involved, and, as a rule, does not lead to any common action in behalf of the tribe itself. Therefore, the concept of crime in a sociological sense is non-existent.

which institutes and controls this co-ordination in society is no other than law." [11]

These brief remarks probably will be sufficient to demonstrate the fact that the legal aspect of social life is not alien to, but forms part of, the science of sociology. Therefore, it is legitimate to examine criminal phenomena taking into account their legal phase.

Of course, in our day Beccaria's definition of crime as of " some act injurious to public welfare " can no longer stand the test of either sociologic or legal criticism, his formula being obviously too vague and too general. In this respect we are in full agreement with Garofalo and the anthropologists who claim that the narrow legalism of the classical school has been thoroughly discredited mainly owing to two facts: First, that they failed to disclose the connection between the nature of crime and the nature of the criminal, and secondly, because their criminological theories left the social aspect of criminality entirely out of consideration.

So far back as in 1889, Liszt, Prins and the other scientists, on whose initiative " The International Union of Criminal Law " was founded, recognized the necessity of examining criminal phenomena both from the judicial and social viewpoints. They also made a material concession to the Positive School by sanctioning the distinction, emphasized by the latter, between habitual, or "*incorregibili*," as Ferri called them, and occasional criminals. In point of fact, the difference between these two classes is of paramount practical importance, not only to sociology but to legal science as well.

13. Criminals — Habitual and Occasional. From the technical angle of the penal code, any person who happens to commit a prohibited and punishable act is considered a criminal; but both sociology and criminology agree that, while the habitual criminal or recidivist, deliberately attempts to injure the existing social order, or at least, willfully and knowingly ignores its precepts, — in the occasional transgressor the psychic element of anti-social intention is scarcely noticeable or non-

[11] N. M. Korkunov, " General Theory of Law," II. Ed., p. 323, New York, 1922. Italics ours.

existent. The measure of harm — individual and social — resulting from either the habitual or the occasional crime might be equal, and accordingly, the punishment therefor might be the same in either case;[12] nevertheless, the sociologic meaning of the two transgressions is quite different. The elements which go to make up the occasional crime are mostly external, and their conjuncture, like a heavy burden, drags a person down to the level of moral despair. When this psychic state is reached, the ground for the criminal violation is prepared. A slightest shock from the outside, a minor failure, a trifling disappointment are sufficient to prompt an honest man to perpetrate a crime which, indeed, in this particular instance, will cause the greatest moral suffering to the perpetrator himself, and thus, to quote Tolstoy's words again, crime is converted into punishment, perhaps of the worst kind.

14. Criminal Psychology Illustrated by Dostoievsky's "Crime and Punishment." In this connection the classical analysis of Dostoievsky in his "Crime and Punishment" will be recalled by the reader. Essentially honest and kind-hearted, but stricken by poverty and neurasthenia, discouraged by misfortunes and mental worry, Raskolnikov, a student in one of the St. Petersburg colleges, happens to overhear a conversation about a contemptible old woman keeping a small pawnshop somewhere in the vicinity of his apartment. The woman is a cruel creature. She has no pity for her "clients" who all belong to the poorest and downtrodden strata of the city population. Everyone who has the bad luck of being in her clutches is doomed and inevitably sinks to the depths of abject misery. She has a sister, a timid girl, whom she mistreats all the time. The very existence of the wretched usurer is not only meaningless but perhaps harmful.

[12] This, however, is not always true. Modern legislation, including the so called Baumes Laws, draws a distinction between recidivism and occasional crimes, imposing more rigid punishments for the former. This tendency was also very pronounced in the Russian Code of Punishments (1885). Thus, simple theft comitted for the *third* time, was punished with imprisonment in corrective penitentiary and entailed the loss of some civil rights (Sect. 1655). Likewise, *habitual* horse-stealing (Sect. 1654^1, part 2) was punishable with long terms of forced labor and the loss of all civil rights, whereas, this crime committed for the first time, entailed only imprisonment in a corrective penitentiary and the loss of some civil rights.

15. Genesis and Growth of the Criminal Intent in Raskolnikov. *Why should she continue to live?* — This is but a casual thought that flashes through the tired brain of Raskolnikov. — In different circumstances the suggestion would have been instantly forgotten and drowned in the stream of normal ideas and mental impressions. But in Raskolnikov's case it is not his personal misery only that leads to the final moral collapse; — his beloved sister's honor is at stake, and something must be done in order that the critical financial situation of the whole family might be relieved.

But what *can* be done? —

By mere accident Raskolnikov learns that the old woman is usually home alone around seven o'clock in the evening. This bit of information, in itself, is insignificant; he almost forgets it.

The idea of murder is still nothing but a distant mirage, no more than a theoretical scheme; its practical realization seems *impossible*. The very supposition that the abstract thought will, or may be, converted into action evokes in Raskolnikov a feeling of revulsion: "Oh, God! — he exclaims — how disgusting this all is! And is it really possible that I? . . . No, it's trash, nonsense! . . . Is it conceivable that such a horror can dwell in my head? — To think only that my heart is capable of harboring such dirt!! . . ."

Weary days bring no relief, mortal fatigue, physical and mental, assumes in Raskolnikov a dangerous form of hysteria. He spends hours lying on the dirty couch in a dark corner of his unattractive room. Disconnected thoughts in a whirl invade his intellect. Time and again, some reflective impulse brings back to him the image of the old woman in the pawnshop; it gradually grows more and more persistent, until it becomes an *idée fixe*. *Why should she live?* — She, in whose heart not a single noble feeling has ever entered?

16. Last Warning. Then the last warning comes — that terrible " dream of Raskolnikov " about the horse tortured and beaten to death by a mob of drunken peasants. In a state of delirium the bloody vision of the approaching murder, despite its abomination, overwhelms Raskolnikov. Henceforth

it will hold him in its iron grip. Cunning reason will seek to deceive the troubled conscience and justify the egoistic nature of the contemplated crime by attributing to it a fictitious motive of social justice. The Napoleonic idea "everything is permitted" will challenge the basic principles of Christian morality, and thus the anti-social element of premeditated murder will find its place in the range of other psychic ingredients of Raskolnikov's deed. Step by step, the criminal idea undergoes a process of crystallization. Now it is no longer an abstract proposition; it is a concrete and categorical imperative of future action. Therefore, when Raskolnikov hears somebody in the court-yard shouting: "It's soon seven o'clock," he suddenly recalls the fact that at this particular hour the old woman must be home, all alone; like lightning, the thought flashes that this is the opportune moment for immediate action; his will, weakened as the result of the protracted psycho-pathological condition, is instantly galvanized; in great haste he leaves his house, and one hour later the double murder is already a dreadful reality.[13]

17. Egocentricism in Habitual Crime. The egocentric or anti-social tendency is the psychological foundation of the habitual crime; external circumstances, of course, must be favorable, facilitating its perpetration. But here their part is of secondary importance, the propelling factor in the realization of the criminal idea being the anti-social instinct itself, whether of atavistic or acquired origin. This tendency is of a complex nature, and its manifestations are manifold. However, at least three mental attitudes, appearing in different combinations, seem to be invariably associated with it:

a. defiance or neglect of the existing social order;

b. following the line of least moral resistance;

c. absence of any remorse which, although a negative symptom, is quite typical of the recidivist psychology.

[13] On the juridical significance of Dostoievsky's "Crime and Punishment" see A. F. Koni's speech delivered on February 2, 1881, before the Law Society of the St. Petersburg University. The full text of the speech is published in Vol. IV, pp. 238–258 of Koni's memoirs "*Na Jiznennom Puti*" ("Along the Path of Life"), Berlin, 1923.

Social injury being equally the result of occasional and habitual crimes, the law has to punish both, especially in view of the principle that government authority must be upheld and the public mind constantly made cognizant of the fact that the state cannot and will not tolerate any violation of the existing social order, as expressed in its criminal statutes.

The practical significance of the unfailing reaction of the state to crime, in the form of punishment, is increased by the consideration that society is not in a position to discriminate between the casual violation of law and the professional crime. Very often this distinction can be properly ascertained only after criminal proceedings against the offender have been instituted.

18. Habitual Criminal and "Criminal Type." The anthropological school endeavored to prove the existence of a distinct criminal type, possessing certain physical and psychical characteristics. For this purpose a vast quantity of clinical data has been accumulated, mainly with regard to cranial, cerebral and various psycho-pathological traits observed in prison inmates.[14] While all this research work is of intense interest, nevertheless modern science is inclined to doubt the existence in the habitual criminal of any permanent anomalies, whether anatomical or psycho-pathological. Cranial measurements as well as the data on the weight of the brains of recidivists certainly do not furnish conclusive proofs to the effect that constituent irregularities of any definite nature can be safely ascribed to this class of criminals. As Havelock Ellis, an experienced anthropologist himself, stated:

"considerably greater importance was formerly attributed to the shape and measurements of the head than we can now accord to them, although the subject still retains much interest." [15]

[14] On these subjects, as stated, there are many brilliant studies. Among the more valuable we may mention the following: Laurent, "*Les Habitués des Prisons*," Kurella, "*Naturgeschichte des Verbrechers*," Havelock Ellis, "The Criminal," Lombroso's writings on criminal anthropology enumerated in the appendix to his volume "Crime, its Causes and Remedies"; see also his "Man of Genius" and Dr. Pauline Tarnowsky, "*Les Femmes Homicides*."

[15] Havelock Ellis, *Op. Cit.*, p. 44.

Equally, anomalies pertaining to the hair, the shape of the ears and different other organs are in no way characteristics possessed exclusively by professional criminals.

It must be remembered that Lombroso's theory according to which murderers, as a rule, are brachycephalous, was contradicted by subsequent studies of Luigi Monti, although he had followed the methods of cranial measurements used by Lombroso himself. For this reason cautious scientists, like Ranke and Baer, reached the conclusion that no definite relation between the encephalic cavity and the criminal tendency can be established.

On this ground, at present, it is hardly possible to uphold Lacassagne's views according to which the following anthropological characteristics necessarily appear in the "criminal type":

"Prognathism, abundant woolly hair, scarce beard, usually brown and dusky skin, oxycephaly (pointed head), obliquity of the eyes, small size of the cranium, development of the jawbones . . . , receding forehead, huge and ansated ears, analogy between the two sexes, and muscular weakness. These symptoms, added to the observations gathered in the course of post-mortem examinations, draw the European criminal close to the pre-historic man and the Mongol." [16]

19. Cranial Data and the Criminal Type. Recognizing the ill-defined nature of these different "marks of identification," some Italian scientists, especially Enrico Ferri, sought to confine the physico-anatomical traits enumerated by Lacassagne, to the "born criminal" and more specifically the "born-murderer." [17] But all these speculations are of little value in the light of the more recent unbiased research which demonstrates the fact that everyone of the symptoms set forth by the anthropologic school may equally be encountered among and applied to individuals belonging to the non-delinquent strata.

Much in the same way, craniological surveys are singularly vague in their results. Thus, Dr. Ch. Perrier, having measured

[16] *Revue Scientifique*, Vol. I. p. 683, 1881.

[17] Compare Enrico Ferri's "Criminal Sociology," pp. 48, 527, Boston, 1917.

and otherwise examined 859 craniums of inmates in the Central Prison at Nimes (among whom there were 607 recidivists), stated:

"Altogether, the cephalic symptom is one of a racial character, conspicuously non-evolutive, whose average greatly varies according to the different provinces, regions, and, sometimes, within the same region. This symptom does not justify the drawing of any distinction between criminals and other persons." [18]

The dependency of the shape of the cranium upon racial factors is a fact which has been also fully corroborated by the research work of German biologists, Virchow and Weissbach, with the result that modern criminology emphatically rejects the idea of tracing the origin of the morbid instinct to any anatomical characteristics of the skull. Nor is it possible to derive any lasting benefit from the pseudo-scientific premises of phrenology which seeks to explain every human emotion by cerebral localization. Even if it could be proved that certain mental faculties are focused in some specific part of the brain — and Gall actually did localize the speech and optic centers — nevertheless such a discovery would add hardly anything to the sociologic notion of crime.

20. Indeterminate Character of Anthropological Symptoms. It seems that no practical conclusions can be drawn from a statistical survey which, for instance, establishes the fact that among 900 normal persons examined on some occasion, 90.78% had chestnut hair and 9.22% fair hair, while among 100 sexual offenders inspected on another occasion, the respective percentage was 81.85% and 16.67%. In the same way, little can be gained by the practical criminologist from the study of the color of the hair, as was conducted by Dr. J. Beddoe, among the British population with reference to prison inmates. These and similar observations may be of some general interest to criminology, but they, by no means, justify any specific deductions regarding the nature of crime and the constituent characteristics of the criminal.

[18] Dr. Charles Perrier, "*Le Crane et ses Rapports avec la Taille, La Grande Envergure, Le Buste, Le Pied chez les Criminels*," Paris, 1920, p. 160.

On the other hand, some of the anthropological experimentations are conspicuously inconclusive. Such, for instance, are the tests made by Dr. P. Tarnovsky relating to physical sensibility. In point of fact, they failed to establish any definite distinction between the habitual criminals and the non-delinquent population.

Still less importance should we attach to tattooing, the use of thieves' slang [19] and similar habits which, in days gone by, were regarded by anthropologists as something undividedly belonging to the criminal class.

21. Morbid Heredity and Criminal Type. Lombroso and his disciples laid great stress upon unfavorable heredity, as a factor producing the criminal type. In this connection a great number of family records were examined and the various characteristics analyzed. Thus, in one of his books Lombroso gives the following table regarding 104 criminals whose heredity he examined:

71 showed some hereditary influence,
20 had alcoholic fathers,
11 " alcoholic mothers,
8 " criminal fathers,
2 " criminal mothers,
5 " fathers who were insane or had had meningitis,
5 " insane or epileptic mothers,
3 " mothers who were prostitutes,
6 " insane brothers and sisters,
14 " criminal brothers and sisters,
4 " epileptic brothers and sisters,
2 " brothers and sisters who were suicides,
10 " sisters who were prostitutes.[20]

These observations seem to indicate that the criminal propensity, in a certain measure, can be conveyed from generation to generation. In order, however, to demonstrate the unreliable character of such and similar anthropological data, we shall refer to another table classifying Marro's survey relating

[19] An extensive vocabulary of thieves' slang partly of Bohemian and partly of Hungarian origin used in Austria and Germany, will be found in H. Gross's " Manual for Prosecution Attorneys," (Russian Edition).

[20] Lombroso, " Crime, Its Causes and Remedies," p. 151, Boston, 1912.

to the causes of death of 30 parents of criminals, and 100 parents of honest men:

	Father		Mother	
	Criminal	*Honest*	*Criminal*	*Honest*
Alcoholism	7.2	2.4	2.1	...
Suicide	1.4	...	...	3.7
Insanity	6.5	2.4	5.3	...
Cerebro-spinal disease	21.1	14.6	18.2	7.4
Heart disease	6.5	14.6	3.2	18.5
Dropsy	4.3	2.4	6.4	3.7
Phthisis	5.1	2.4	10.7	...
Nervous shock, worry, etc.	2.1	2.4	4.3	...[21]

A careful analysis of these two tables discloses the fact that alcoholism, for example, has something to do with the genesis of the criminal tendency; but here, again, we would be far from justified in asserting that the inclination towards alcoholism in the father invariably promotes a criminal disposition in the son.

On the ground of these findings it should be concluded that the heredity symptom alone is quite insufficient to explain the origin of habitual criminality. An important corrective was suggested by Dugdale, when in his "Jukes," he introduced the element of social environment into the historico-biographical study of prison inmates in the thirteen county jails of the State of New York (1874) which he had been instructed to cover by his survey. This author stated:

"Observation discloses that any given series of social phenomena — as honest childhood, criminal maturity and pauper old age, which sometimes occur in the life of a single individual — may be stretched over several generations, each step being removed from the other by a generation, and in some cases, by two. Consequently, the nature of the investigation necessitated the study of families through successive generations, to master the full sequence of phenomena and

[21] Quoted by Lombroso, *Op. Cit.*, p. 152. As a matter of fact it has been observed that alcoholism enters into the aetiology of crime only in a limited sense, encouraging sexual offenses and those committed in revenge. But this factor has practically no bearing upon other crimes, especially forgeries, fraudulent bankruptcy, etc. Therefore, alcoholism is but a contributing factor to specific classes of crimes, and in no way the underlying cause of criminality in general. On alcoholism and crime, see Chapter IX.

include the entire facts embraced in the two main branches of inquiry into which the subject necessarily divides itself: THE HEREDITY that fixes the organic characteristics of the individual, and THE ENVIRONMENT which affects modifications in that heredity." [22]

More recently the same doctrine of the interdependence of heredity and environment in the process determining the modes of behavior in general has been expressed by Professor Leonard Carmichael who says:

" If the hypothesis that the organism be equipped with certain preformed structures, which develop without the aid of the environment, be rejected, it seems equally true that the contention that all behavior may be explained as the result of post-natal conditioning is equally in error. . . . Beside these two radical views of psychological preformism and psychological epigenesis there is of course a middle view which the present writer has defended in the past and which it seems must implicitly be held by most students of this problem. This hypothesis holds that *all* behavior is the result of the *interdependent,* but not necessarily equal activity of certain factors which may be classed as hereditary and those factors which may be classed as environmental." [23]

With specific reference to habitual delinquency it may be noted that the significance of the hereditary symptom is restricted by the fact that professional criminals rarely lead a regular family life; they rarely marry; they rarely have children. Alluding to the typical criminal known in Paris as the "*apache,*" Dr. Locard observes:

" The apache does not marry and his casual intercourse never results in repopulation. . . . He dies at a young age, since tuberculosis, syphilis, alcoholism and prison-life combine to abbreviate the time during which his destiny is to cause harm." [24]

This remark is equally true regarding the habitual criminals in other big cities, such as Moscow, London and New York.

[22] See Robert L. Dugdale's " The Jukes," 4th Ed., p. 11. New York and London, 1910.

[23] See Psychological Review, Vol. 34, No. 1, January 1927, pp. 45–46.

[24] " *Le Crime et les Criminels.*" p. 10.

Wherever a dense urban population is found, we see a stable criminal stratum made up of recidivists and conscientious lawbreakers. From year to year, this degenerate population increases in numbers, evolving new methods of organization, the aims of which are distinctly *anti-social.*

In other words, it may be said that neither physical anomalies nor heredity, *an und für sich,* constitute the underlying cause of crime. Both these factors, of course, do contribute, to a certain extent, towards the perpetuation of criminality, but neither can be regarded as its immediate and sole cause.[25]

22. Moral Degeneracy in Habitual Criminals. — Relativity of Ethical Concepts of Crime. Moral degeneracy is a permanent symptom of professional criminality, a feature which Garofalo calls "moral anomaly from the civilized type." But Garofalo's conception is based upon the theory that moral insensibility does not signify anomaly in relation to the "*genus homo*" but only in relation to "the perfected type represented by civilized peoples."[26]

The existence of such a perfected type, common to all civilized peoples, is, however, something we cannot consider real.

What are the civilized peoples? What characteristics, indeed, should determine whether a people is to be considered a civilized nation, as distinguished from the barbaric tribe or

[25] In connection with heredity, it might be mentioned that some of the noted criminals belonging to the instinctive or habitual classes, descended from perfectly honest and even enlightened parents. On this point it is interesting to recall that one of the most dangerous habitual murderers of the nineteenth century, namely, Thomas Griffiths Wainewright, the secret poisoner almost without rival in that or any age, as Oscar Wilde called him, was born at Chiswick, in 1794. "His father was the son of a distinguished solicitor of Gray's Inn and Hatton Garden. His mother was the daughter of the celebrated Dr. Griffiths, the editor and founder of the "*Monthly Review,*" the partner in another literary speculation of Thomas Davis, that famous bookseller of whom Johnson said that he was not a bookseller, but 'a gentleman who dealt in books,' the friend of Goldsmith and Wedgwood, and one of the most well-known men of his day. Mrs. Wainewright died in giving him birth, at the early age of twenty-one, and an obituary notice in the "*Gentleman's Magazine*" tells us of her 'amiable disposition and numerous accomplishments,' and adds somewhat quaintly that 'she is supposed to have understood the writings of Mr. Locke as well as perhaps any person of either sex now living.'" See Oscar Wilde, his essay "Pen, Pencil and Poison." Examples of this kind, much to the disappointment of the orthodox supporters of the heredity theory, could be multiplied almost indefinitely.

[26] *Op. Cit.,* p. 100.

the primitive ethnological group? — Even though we should succeed in discovering some generic elements enabling us to arrive at the proper definition of the term "*civilization*" and "*civilized*", the conception of "the perfected type represented by civilized peoples" would still remain without a scientific foundation.[27]

Ethics is a phenomenon organically tied to and derived from the particular race and nationality. Every nation, whether it be classed as civilized or barbaric, has its own system of ethics resulting from a complex combination of racial, economic, religious and climatic factors. The philosophical ideas of Confucius and Lao-Tze, which are at the bottom of Chinese ethics, or Buddhism, which is the basis of the Hindoo moral conceptions, have very little in common with either the morality of Roman Catholicism or the ethics of both the Talmud and the Schulhan-Aruch, or the rationalistic and utilitarian tendencies of Protestantism.

23. Racial Differences and Garofalo's "perfected type." The perfected type, as conceived by Garofalo, presupposes if not the equality of races, then at least a tendency of achieving it. This is precisely the thing which is denied by the great scientists of the nineteenth and twentieth centuries. The mutual repulsion of civilizations is a firmly established fact acknowledged by such master-minds as Gobineau and Houston Stewart Chamberlain.[28]

It will be recalled that Gobineau, in his classical work "The Inequality of Human Races," establishes the following four fundamental laws which seem to be generally accepted by modern ethnology.

I. "The tribes which are savage at the present day have always been so, and always will be, however high the civilization with which they are brought into contact.

II. For a savage people, even to go on living in the midst of civilization, the nation which created the civilization must be a nobler branch of the same race.

[27] Further information on this subject will be found in §§ 136 and 138, Chapter VII.

[28] See his "Foundations of the Nineteenth Century," translated from the German, introduced by Lord Redesdale, Vol. I, pp. 320–321, 368, etc.

III. This is also necessary if two distinct civilizations are to affect each other to any extent, by an exchange of qualities, and give birth to other civilizations compounded from their elements. That they should ever be fused together is of course out of the question.

IV. The civilizations that proceed from two completely foreign races can only touch on the surface. They never coalesce, and the one will always exclude the other." [29]

These laws preclude the very possibility of the existence of the, so called, perfected type represented in civilized peoples.

Racial differences, which are generic, produce ethical differences so deeply rooted that standardized morality is nothing but a dream. Consequently, sociology and criminology cannot build their conceptions of crime on the presumption that a certain number of individuals, described as criminals, deviate from some ephemeral perfected type of civilized mankind.

On this ground, speaking of moral degeneracy or insensibility, we should transfer our inquiry into other fields which will be found common to all social groups, regardless of their racial or national constitution, so long as they have reached a certain degree of organization enabling them to form a state.

24. Crime as an Integral Part of Society Itself. Social Friction — Fundamental. Crime being a social phenomenon, it cannot be studied and its nature revealed without taking into consideration the nature of society itself.

Organized society is not a mere mechanical aggregate composed of separate individuals a, b, c, d. . . . Just as in the physical world, quantity translates itself into quality, so in social life, the conglomeration of individuals a + b + c + d . . . acquires new faculties of organization and development, giving birth to a united social phenomenon which we call society.

When human beings and originally disconnected ethnical units reach the level of a social organization, primitive as it

[29] Count Arthur De Gobineau. "Inequality of Human Races." English translation of Adrian Collins, p. 174, New York, 1915. On this subject Gustave Le Bon in his brilliant sociological studies has fully corroborated the views of Gobineau. See his "The Psychological Laws of the Evolution of Peoples" and "The Crowd." In the latter volume he states explicitly ". . . the power of the race is such that no element can pass from one people to another without undergoing the most profound transformations."

may be, within its midst there appear social tissues which begin to crystallize, attaining, with the time, ever-increasing vitality and precision of form.

It will be easily understood that this process of social integration is being achieved as a result of countless efforts and mutual adaptation among those taking part in the construction of the social order.

From the embryonic moments of this struggle for social existence we observe that phenomenon which can be described as *social friction,* meaning that, while the larger portion of the particular social group is engaged in the erection of a social order, the smaller portion of the same group opposes and hampers these constructive activities.

25. Social Friction, — its Psychologic Background. In the life of human societies friction is a fundamental law. Nature herself, having made men unequal, it becomes inevitable that human beings should differently react to the efforts of their countrymen aiming at social construction. Just as there dwells in man the social instinct, leading him to associate with other human animals, so there exists in him an anti-social instinct, or egocentric tendency, which, in its *extreme* manifestations assumes the form of criminal anarchy, with its renunciation of the very principles of state and government authority.[30]

The explanation of such a psychic state is simple: All people are principally concerned about their personal good and their immediate egoistic interests which, however, may, and often do, stand in opposition to the interests of society as a whole.

Social progress gradually teaches the individual to coördinate and harmonize his selfish aims with the requirements of the commonwealth to which he belongs. In this way, as J. J. Rousseau observed it, we all abdicate a fraction of our personal welfare — real or imaginary — in favor of the social group of which we are but constituent parts. Nevertheless, within any society or state, at any stage of civilization, and under any form of government, we are sure to find people who, for one reason or another, decline to subordinate their egoistic im-

[30] On criminal anarchy, see Chapter II, § 42.

pulses and emotions to the good of the social entity. Some of them do not know how to adjust themselves to its standardized morality, their mental equipment being so poor that they fail to conceive the significance of the structuralized community to which they belong. This is the case of *pathological maladjustment* exhibited by imbeciles, physical or moral, idiots and cretins, also known as " socio-paths." [31] (see Chapter IX). But there are other people who, partly as a result of imitation, partly because of vicious social environment and perverted education, partly in consequence of morbid heredity — even though possessing adequate mental faculties — develop utterly egocentric characteristics; they deliberately join the ranks of the criminal strata of the population. They become habitual law-breakers, and by their destructive activities tend to increase the volume of social friction.

26. Excessive Friction — Social Cause of Crime. The egocentric tendency, then, is the generic cause of crime. As Lester P. Ward justly remarked in his " Dynamic Sociology " :

" . . . Men are compelled to conduct themselves according to the established standards of propriety. This is the condition upon which society has been enabled to develop. The few who attempt to break over these restrictions quickly come to grief. They drop into the criminal classes, and find their way into the penitentiaries; or they are stamped as mono-maniacs, fanatics, 'cranks,' and are rigidly guarded." [32]

At this stage of our study we shall not consider the particular reasons why an individual may oppose the existing political order. The important point, elucidating the social cause of crime, is, that between society as a whole and its individual member, there develops friction prompting the latter to violate

[31] Dr. J. E. Lind suggests the following definition of constitutional psychopathy: " Anomaly of character, which because normal or usual to the individual cannot be said to properly constitute a psychosis, but because it leads to a rather inefficient type of adjustment of the individual to his environment and because persons exhibiting these peculiarities often become actually disordered, may be considered a borderland condition." Quoted from The American Journal of Psychiatry, Vol. VI, No. 4, April 1927, p. 672.

[32] Lester F. Ward, " Dynamic Sociology," Vol. II, pp. 372–373, quoted from his " The Psychic Factors of Civilization," p. 102, 2nd Ed., Boston — London, 1906.

certain traditions which have been produced and sanctioned by the community.

Crime in its sociologic sense, being originated by the egocentric instinct, usually evinces the centrifugal nature of the deed.

The fact that social friction is as old as society itself, and that this phenomenon lies in the nature of social things, explains why crime has always been in existence and always will prevail, regardless of the political and ethical credo adhered to by a nation, at any given moment.

Moral conceptions, religious beliefs, legal traditions, economic conditions and political forms are essentially transitory phenomena. Their sum total, however, goes to make up the existing social order which is protected by that portion of society which actually controls the functions of the social unit.

27. Crime — Willful Attempt against the Social Order. However, no matter what the social order may be, the act of an individual aiming at the willful transgression of its dictates, from the standpoint of sociology, is a crime. Whether this act is equally a crime in a legal sense, is a matter of fact and not of principle. It may safely be asserted that the tendency is to have every important violation of the social order translated into the terms of penal legislation. The more menacing, from the social standpoint, a transgression is, — the more sure we are to find a provision therefor in the respective penal code. On the contrary, if a violation is negligible, while it still remains in the same order of social phenomena, it might be intentionally excluded from the class of *punishable* deeds. In this case, it will be found among civil transgressions to which society does not apply any punitive sanction.

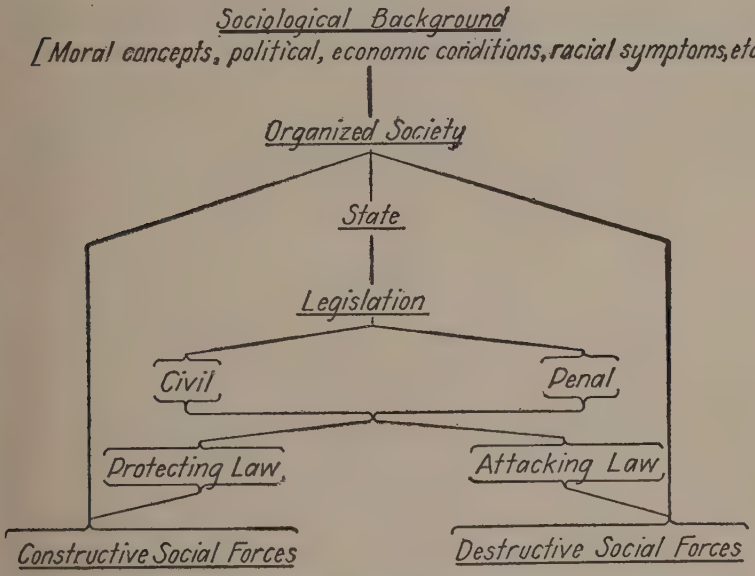
This comment answers the question, frequently asked, whether a criminal deed necessarily is an immoral act? — It usually is, *from the standpoint of the existing social order.* — But morality itself being a relative conception, it is incorrect to entertain the idea that crime, *at all times and everywhere,* is a manifestation of intrinsic degeneracy. On the other hand, we may very well imagine a number of deeds which, being

not immoral in themselves, are regarded as menacing to the existing social order, and, therefore, punishable.

For instance, there is nothing inherently wrong in selling a bottle of beer; however, for reasons which we shall not attempt to explain here, this deed, in the United States, is prohibited and punishable, and consequently, considered a crime. Equally, there is nothing immoral in a public utterance describing the fallacies of Marxism. Nevertheless, this act is prosecuted as a crime in Soviet Russia, because of the fact that the social order existing there is based upon the Marxian doctrine.

Generally speaking, inadequate legislation and chaotic social conditions are liable to intensify social friction which increases the number of crimes committed during a specified period.[33]

Schematically, the entire relation between the social order and crime may be expressed thus:



28. Crime in its Sociologic Sense — Defined. The cause of crime thus being rooted in the nature of society itself, the contents of crime may vary substantially as a result of changes

[33] See paragraph 115, Chapter VI.

taking place in the political structure. The physical anomalies and moral insensibility may be, and usually are, factors encouraging the individual to engage himself in the perpetration of crime. But, from the standpoint of sociology, neither physical nor moral degeneracy is the all-embracing cause of crime. This does not mean that the different pathological and psycho-pathological symptoms have no bearing upon criminality; but methodologically the generic symptoms of crime should be examined first.

Therefore, it was considered necessary in the introductory chapter, to refer, though briefly, to the underlying cause of criminality which was found in social friction and in the centrifugal tendencies existing in every organized society.

With this sociologic premise in mind it can be said that *crime is a deed, prohibited and punishable under the laws of a particular state, constituting a willful attempt on the part of the individual against the existing social order, and that factor which controls the coördination of the heterogeneous elements, of which society is the synthesis.*

To overcome the destructive effect of crime, the state is compelled to resort to some system of repression which usually assumes the legal form of penal legislation and physically results in coercion.

CHAPTER II. — GENESIS AND NATURE OF THE CRIMINAL PROPENSITY

29. The Nature of the Criminal Propensity and Instincts. 30. Examples of the Structuralization of the Criminal Propensity. 31. Criminal Propensity Fostered by Imitation among School Children. 32. The Juvenile Mind in relation to the Foundation of Bad Habits. 33. Gradual Structuralization of the Mind. 34. Juvenile Criminality, Industrial Civilization, and Social Revolution. 35. Juvenile Criminality and the Social Background. 36. Criminality in General and Social Environment. 37. Collective and Individual Psychology in the Formation of the Criminal Propensity. 38. Individual Psychology and Corpus Delicti. 39. Criminal Intent and Abnormal Mental States. 40. Criminal Impulse and Inhibitory Influence of Social Environment. 41. First Offense and "Professional" Ties. 42. Irritation against Society as the Result of the Offense; Extreme in Anarchy. 43. Professional Criminality and Its Characteristics. 44. Recidivism and Its Attitude towards the State and Prison. 45. Opposition to Society, and Criminal Associations. 46. Discipline in Criminal Associations. 47. Abadie Gang. 48. Technical Efficiency and Recidivism. 49. Criminal "Aristocracy" and the "Lower Depths." 50. Specific Habits among Professional Criminals. 51. International Scope of Work among the "Upper Strata."

29. The Nature of the Criminal Propensity and Instincts. While social friction is the prime cause of crime, nevertheless, a proposition so generally expressed does not exhaust the sociologic aspect of criminality; in fact, it is but its major term from which criminology should begin the inquiry into the social factors producing delinquent phenomena.

The egocentric or anti-social propensity, causing social friction, and ultimately leading to crime, as any other impulse, is not created in complete form, but is being gradually evolved under the influence of countless social transformations, and is thereupon conveyed, by inheritance, to succeeding generations.

The egocentric impulse, being of instinctive origin, is founded upon the same biological principles which, in psychology, are attributed to instincts in general.[1]

[1] On the subject of instincts, see Professor W. James, "The Principles of Psychology," Vol. II, Chapter XXIV, pp. 383–441, and also Professor Wm. McDougall, "An Introduction to Social Psychology." Rev. Ed., pp. 20–124, Boston, 1926. D. A. Spalding and Romanes justly pointed out that certain instincts, after having served their biological purpose, fade away and thus cease to exercise further influence upon individual conduct.

This question is discussed at some length in a later chapter (VII), when the psycho-physical characteristics of criminality are examined. Here it should be only mentioned that the egocentric propensity is an inherent factor which, to a large degree, governs the process of habit-formation; in its structuralization it undergoes various modifications. Being an instinct, this tendency, in turn, may be either inhibited by social environment and rationally acquired habits, or accelerated in its formation and strengthened by the subsidiary psychic agency of *imitation.*

It does seem that other motives, like pugnacity, envy, anger, — as well as the hunting instinct, — may come in as psychic elements in the crystallization of the criminal impulse. — Still, their effect is usually strictly limited and confined to individual psychology, failing to acquire a pronounced socionomic significance.

30. Examples of the Structuralization of the Criminal Propensity. The psychic processes leading to the awakening of the criminal instinct, generally speaking, are not complex. Few examples will suffice to demonstrate the progress of antisocial inclinations in either adults or adolescents.

I. In the family X. there are two children, a girl of eight and a boy of six. Their mother is a somewhat careless woman; she is in the habit of forgetting to lock the cupboard in which sweets are kept. On some occasion the girl, taking advantage of mother's absence, pilfers a bonbon; her little brother watches the girl doing this. The sweet booty is divided between the two, and the incident remains unnoticed. Shortly after that, the experiment is successfully repeated. But then, a precedent easily becomes a habit, especially if the act provokes a pleasurable feeling. Finally, mother begins to take heed of the mysterious disappearance of the candies. She locks the cupboard. However, both the girl and the boy have already acquired the *habit* of stealing, which, to be sure, so far has been confined to bonbons. When they find the cupboard locked, they both experience an emotion of profound disappointment which they seek to counteract. The girl knows that candies could be bought in the nutshop around the corner. She has

no money, but she happens to observe some silver change on father's desk. Why not utilize it in order to buy the candies? — Father certainly would not have thought of counting the change; so he will not notice the disappearance of a dime. — Candies are bought, and once more the savory sensation is restored. Thus, little by little, the criminal impulse assumes the form of a *habitual* tendency. Of course, in order that it might be converted into a criminal disposition of a more serious nature, collateral circumstances would be required. On the other hand, the tendency contracted at an early age may fade away as the result of some educational influences.

It must be only remembered that an impulse rarely can be arrested in its growth by mere reasoning; something more than mental abstractions should be set forth in order that a child be induced to abandon an impulse which hitherto has been found pleasant. As Professor James states:

"Reason, *per se*, can inhibit no impulses; the only thing that can neutralize an impulse is an impulse the other way. . . ." [2]

What in every specific instance might constitute "the impulse the other way," is purely a matter of fact: Now it can be the reaction of *fear* (punishment); now it might be associated with the emotion of *sympathy* (provoked by the sight of mother's sorrow), or else we may find it in the impulse of *shame* (a boy is ashamed of being called a thief, especially in public).

II. Likewise, sexual crimes are often the result of acquired habits and imitation. The sexual instinct is a natural impulse; it has a legitimate place in the range of the fundamental desires of the human animal. Moreover, it is the vital tendency without which the processes of life would have been brought to an end. Still this instinct may happen to find its satisfaction in some artificial or perverted form of excitation. The experiment having been repeated several times, it is automatically converted into a habit which might lead to the perpetration of most obnoxious crimes, including the corruption of the underaged and sexual murders.[3]

[2] Professor W. James, *Op. Cit.*, Vol. II, p. 393.

[3] Professor August Forel in his classical treatise "The Sexual Question," natu-

Notwithstanding the fact that the external manifestations of impulses in sexual crimes differ in every respect from those described in the preceding paragraph, — the psychic mechanism, by means of which the criminal instinct is brought to material realization, is identical in both cases.

III. Edmond Locard, whose works we had the occasion to quote before, gives an instructive account of the gradual transformation of a children's gang, engaged in innocent street-mischief, into a destructive and conspicuously anti-social criminal association. He says:

" The idle child seeks to find in the streets young folks of his own age. They play or loiter. But when loafing around the shops, they perceive a number of articles the possession of which appears to them desirable but whose acquisition, owing to the absolute scarcity of their resources, is precluded for ever. The temptation to take something that cannot be bought is certainly very strong. Besides, pilfering is not stealing. Is it possible to speak of theft in reference to an apple, a few logs of timber, or a cake? — Still it is felt that one ought not to be caught. The shopkeepers by no means are in sympathy with the fellow who supplies himself at their expense. It occurs also that the patrolman either pulls the boys by their ears when they steal from the counter, or takes them to the neighboring police station. Therefore, one learns to resort to ruse, managing to take without being caught. However, not all manifest equal ability in this game. A spirit of rivalry begins to develop. Some respect is shown by the gang for him who operates with more audacity, who boasts more and who succeeds regularly. He is being looked upon as an example. They will soon detect in him their chief. From this very moment the gang is actually organized. It debates and plans its operations. It is known that some particular showcase is visible from afar, while that arcade there is concealed and is easy of access.

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rally draws a line of demarcation between congenital sexual perversions and those of an acquired nature. But much as he does lay stress upon the hereditary character of sexual anomalies and their distinct pathological aspect, he makes this significant reservation: " Without being congenital and without depending on a special predisposition, *all the perversions of the sexual appetite* that we have just described *may be acquired*, by means of the artificial and continued excitation of a sexual appetite which seeks satisfaction in change and unusual situations." *Op. Cit.*, p. 273, New York, 1925. Italics ours. Similar views have been expressed by other eminent writers on the subject, not excluding Krafft-Ebing. See his " Psychopathia Sexualis," Chapter IV., " Homo-Sexual Feeling as an Acquired Manifestation in Both Sexes," pp. 286–335, New York, 1924.

The one who is shrewder will use his hands, the others will keep watch. If it be a question of division of the spoils, quarrels and fights will arise in the course of which the strongest, or perhaps the more tenacious, or the more cruel will triumph." [4]

31. Criminal Propensity fostered by Imitation among Schoolchildren. Schematic as Dr. Locard's survey may seem, still it accurately interprets the process leading to the birth of organized juvenile criminality, which unfortunately is rapidly increasing, practically in every country.

Once the criminal disposition has taken root in the adolescent mind, it develops with ever-increasing intensity, until finally morbid practices, thus contracted, bring the young person into conflict with the social order. The moment this happens, friction between the individual and the social group to which he belongs, is no longer a casual event in his life; it constitutes a misfortune leaving ineradicable traces in the heart of the young delinquent. In court, even if it be a juvenile court, in prison or reformatory institutions, he inevitably comes in contact with persons whose vicious habits appeal to his imagination and which he readily imitates.

On the other hand "immoral education" is being fostered in school or through school connections. It often happens that among the pupils there appears a boy, sometimes even a girl, who by reason of his or her insolence gains a singular prestige which prompts the children to ape the "leader." Flattered by the attention shown to him by his younger or more timid comrades, he endeavors to perpetuate his influence upon them. He soon discovers that his aim is most easily achieved by the performance of precisely those things which are prohibited by school regulations or by the parents.

Frequently evil leadership of this kind is responsible for the formation of secret school associations where different bad habits are taught and practiced by the young. The influence of such clandestine alliances is especially harmful when

[4] Locard, *Op. Cit.*, pp. 15–16. Lanessan gives a similar account of the structuralization of the criminal propensity among adolescents. See, *Op. Cit.*, Chapter on the natural cause of criminality, pp. 64–102.

home-life fails to provide a counter-balance to sinister temptations coming from the outside.

Lombroso goes so far as to assert that virtually every school association of the type described ought to be regarded as a sort of criminal germ-carrier. Similarly, Dr. Duprat maintains that "children and adolescents, morally abandoned, or those who escape the surveillance of their parents, go to make up numerous groups which are guided by real masters in the art of mischief." [5]

In these schools of vice morbid instincts are being artificially kept alive and cultivated, so that after awhile dangerous habits begin to develop, young men being taught to disregard or even despise the fundamental modes of behavior adhered to by the community and upheld by government authority. The utter destruction of all moral principles inevitably leads to deliberate misconduct and the loss of the conception of duty: serious work is spurned, while professional gambling and similar unscrupulous methods of procuring money, tempt the underaged to associate with the scum of society.

It is not surprising that between such adolescents and the state there should arise friction resulting in the perpetration of crimes on the part of the former, and causing the latter to resort to penal measures.

32. Juvenile Mind in relation to the Foundation of Bad Habits. The juvenile mind in general is swayed without difficulty from one extreme to another, owing to the fact that its conceptions are superficial and not derived from close analytical reasoning. If we adopt Dr. Irving E. Miller's terminology, we might say that the youthful conceptions are purely *psychological,* as distinguished from the *logical* constructions which appear at a more mature age.[6] Both forms of conceptions are based upon experience. As J. S. Mill says, they "do not develop themselves from within, but are impressed upon the mind from without; they are never obtained otherwise than by way of comparison and abstraction." [7]

[5] Dr. G. L. Duprat, "*La Criminalité dans L'Adolescence,*" p. 117, Paris, 1909.
[6] See his "Psychology of Thinking," p. 286, New York, 1915.
[7] J. S. Mill, *Op. Cit.,* p. 427.

The psychological conception, however, embraces but a few disconnected impressions characteristic of or pertaining to the subject or thing in question; the immediate effect thus produced on consciousness does not permit the performance of a successful operation of induction or abstraction. Hence, the conception is neither clear nor appropriate to the matter on hand, while the influx of additional impressions from without promptly displaces or supersedes the hasty notion so formulated.

The *logical* conception necessitates a greater amount of experience, and, consequently, covers a wider range of mental data. It is not merely a quantitative difference, since in this case the abstraction is the outgrowth of inductive processes which suppose highly complex operations of comparison and selection. Here, then, the material which enters into the final composition of the crystallized idea, having been scrutinized, becomes the result of an analytical effort, instead of being merely casually received and automatically registered by the brain.

Thus, the psychological conceptions of sugar, benzene and water chiefly relate to their incidental properties (color, taste, liquid or solid state); but it is not before the logical conception has been formed, that the mind can grasp the meaning of the formula H_2O, or the significance of the observation that sugar is capable of being dissolved in water and incapable of being dissolved in benzene.

33. Gradual Structuralization of the Mind. The brilliant experiments of Flechsig on the ontogenetic evolution of the nervous system demonstrated the fact that myelin appears in the cortical zones at different stages of the development of the human brain. Whether future neurological studies will confirm Flechsig's hypothesis that there are thirty-six myelo-genetic fields, constituting three large chronological groups — (a) the primary, (b) the intermediary and (c) the terminal, — is unimportant from the standpoint of criminology. However, the basic point, firmly established by modern science, is that the biological changes in the constitution of the brain are the result of a *gradual* process. The higher functions of the in-

tellect and the more refined methods of reasoning certainly come into being long after the anatomical structure of the cerebral hemisphere is completed.

It is for this reason that practically in every civilized country children under the age of seven years are considered wholly irresponsible for their deeds, whereas adolescents under the age of fourteen can be punished only if it is proved that, in committing a prohibited act, they fully understood its meaning.

Chiefly because the juvenile mind operates primarily with psychological conceptions, it can be turned in any direction by illogical argumentation, half-truths and idle criticism.

Equally, the moral concepts of youth belong to the same category of mental functions; they are manifestly instable. In his modes of conduct the adult is guided by firmly established ethical principles which form, or at least may constitute, a system of moral self-defense against the sinister influences of social environment. But the moral world of the underaged is full of strange contradictions; it is governed by impulses that are blind and tendencies that are vague. Besides, morality presupposes a degree of self-restraint the exercise of which is rarely a pleasant experience. The egocentric instinct is easier set in motion than " instincts the other way."

On the contrary, immorality and vice are always loose propositions, requiring but little effort on the part of the will mechanism; they are the lines of least resistance, which adolescents often follow, especially in crowded cities providing so many temptations.

34. Juvenile Criminality, Industrial Civilization, and Social Revolution. Juvenile criminality is comparatively a new phenomenon, which is caused by social disintegration, and primarily, the dissolution of the family. The Family Patronage Society of Paris, in 1900–1903, made a study of the records of 646 families whose children have come under its surveillance. It was found that in 438 cases these families were disorganized as a result of either divorce and separation, or the death of one parent or both.[8] It may be safely assumed that the children

[8] See R. A. Reiss, " *Manuel de Police Scientifique,*" p. 25, Lausanne, 1911.

of such parentage were particularly apt to become criminals, unless special care was given to them.

Economic instability, periodical industrial crises, poor housing conditions and unemployment tend to increase the volume of crimes in every country. But aside from these economic factors, there are other social phenomena which cause grave disturbances in the life of organized societies. The whole cycle of present-day ideas, the systematic ridiculing of religion, the inoculation into the public mind of obviously fallacious principles advocated by the materialistic doctrine, with its destructive leitmotiv: "might is right," encourage the underaged, who necessarily are mentally underdeveloped, to disregard those vital rules of social conduct which for centuries have been serving as the solid foundation of civilization and progress.

Furthermore, juvenile criminality, and criminality *in toto,* being social phenomena, are closely affiliated with the general state of political conditions prevailing in every country. It is a sociologic law that the more unrest — either natural or stimulated — there is in a community, the more the social order is menaced from within, the greater also is the percentage of juvenile delinquency. Revolutionary epochs and periods of civil wars are singularly favorable to all kinds of criminal manifestations which go and grow together with the increase of prostitution and widespread sexual immorality, both among the underaged and the population as a whole.[9]

In the British official publication, "Collection of Reports on Bolshevism in Russia," presented to Parliament in 1919, we read this description of conditions which then prevailed in Soviet schools:

"Both boys and girls are herded together, and there is no semblance of morality. The entire absence of discipline in this connection is

[9] Referring to the increase of prostitution in Soviet Russia, Mrs. Kollontay, one of the foremost propagandists of communism, stated as follows: "We know that prostitution is an evil; we even understand that now, in this extremely difficult transition period, *prostitution is assuming large and intolerably extensive proportions,* but we simply wave it aside, we are silent on this phenomenon, partly through a remnant of hypocricy that is still with us as the heritage of the bourgeois view of life, partly through inability to properly grasp and become conscious of the damage which a widely developed prostitution is inflicting upon the working society." See "Soviet Russia," August 1921, p. 42. Italics ours.

having an extremely bad effect on the coming generation. In the classes all semblance of discipline has been destroyed. The children do exactly as they like, sometimes walking out in the middle of a lesson. . . . No punishments, no home-work and no marks are allowed. The attendance is abominable, the children coming and going just as they think fit. It is impossible to keep order, and the classes are simply like a bear-garden. If a master does not happen to be popular, the boys turn him out." [10]

No wonder that the Soviet press has been sounding alarm about the tragic increase of criminality among Russian children, not only in Moscow but in other urban districts as well. Thus, in issue 268 of the Moscow "*Pravda*" for 1920, we find the following:

"We deceive ourselves when we say that the Soviet authorities have taken the children into their care. Just think of what is going on in the streets of Moscow. The streets and squares are crowded with children who sell cigarettes. There are tens of thousands of these adolescent merchants who do not attend school, who do not go to their childrens' clubs, and who waste their time in the streets without supervision, left to themselves. They start with selling; thereafter they begin to be involved in speculation, and finally they become thieves. It is sufficient to say that during six months, the Moscow Commission for the Supervision of the Adolescents has registered 7000 criminals among the young. This, however, is true not only of Moscow but can be applied to Russia as a whole."

Professor Manouvrier, who has given much thought to the problems of juvenile criminality, made this significant observation:

"Thousands of children in Paris are exposed to the same danger notwithstanding the fact that they belong to quite honest families; this, — owing to the fact that their mothers are kept away from their homes; at the same time the school ceases to be a shelter after school hours are over. On this latter point some progress has been achieved, but it is insufficient. There is lack of moral protection in such a city

[10] Collection of Reports on Bolshevism in Russia presented to Parliament by Command of His Majesty. London, April 1919, pp. 30–31. Compare this utterance with the information published in the magazine "Psychiatry and Neurology," No. 1, 1922 (Petrograd-Moscow), according to which juvenile criminality increased in Petrograd 7.4 times compared with the pre-war period.

as Paris, where a multitude of adolescents find themselves in bad surroundings offering much more incentives for debauch and crime than to honest behavior. If we add the decline of moral education in most of the families, accompanied by so called rationalistic education in many primary schools, tending to destroy the moral instinct, which might have been acquired in the family by teaching moral principles in the terms of a categorical imperative, — the only form capable of cultivating this instinct from early childhood, — we find a quite sufficient explanation of the enormous increase of juvenile criminality during the last twenty years." [11]

35. Juvenile Criminality and the Social Background. In other words, environment and the broad social background bear the greatest influence upon the aetiology of the criminal proclivity. In the absence of some specific unfavorable social conditions, in nine cases out of ten, a morbid *impulse* is not likely to assume the form of a criminal *action.*

On this ground we do not share Dr. Burr's opinion who says that "whatever the cause may be, the criminal, as the psychiatrist defines the word, is born and not made." [12] Dr. Burr, we believe, is quite right in asserting that the defect of the criminal, to a great extent, is not intellectual but moral. Nor can it be denied that the mental apperceptions of the criminal are distinctly egocentric. Still, as stated before, morality both in its positive and negative aspects is not immanent mental condition. It is the compound function of psycho-social factors, which, in their conjuncture, produce character and the sum total of our moral convictions.

[11] *Archives d'Anthropologie Criminelle,* Vol. 27, 1912, p. 888, Professor L. Manouvrier's article "*Quelques cas de criminalité juvenile et commençante.*" On education, see Chapter V.

[12] See Dr. Charles W. Burr's article "Crime from a psychiatrist's point of view." Journal of Criminal Law and Criminology, February, 1926, p. 534. In this respect Dr. Burr's views in substance coincide with an earlier theory of Dr. Henry Maudsley who spoke thus of congenital moral degeneracy: "As there are persons who cannot distinguish certain colours, having what is called colour-blindness, and others who, having no ear for music, cannot distinguish one tune from another, so there are some few who are congenitally deprived of moral sense. . . . Here, then, we are brought back to the connection between crime and insanity. A person who has no moral sense is naturally well fitted to become a criminal, and if his intellect is not strong enough to convince him that crime will not in the end succeed, and that it is, therefore, on the lowest grounds a folly, he is very likely to become one." See Maudsley's "Responsibility in Criminal Diseases," p. 58, London, 1906, 6th Ed.

But there is no proof whatever, that in the case of the average criminal the morbid instinct is something with which he was born. On the contrary, every-day-life furnishes countless examples of the overwhelming influence of social environment upon the juvenile mind. The result is that when social conditions are unfavorable as tending to stimulate pathogenic impulses, they are inevitably converted into crystallized criminal habits. This fact seems to be generally recognized by modern sociology.

36. Criminality in General and Social Environment. The bond tying the individual to the particular social group, of which he is a member, is a natural condition; it leads him, sometimes unconsciously, to imitate, follow and adhere to the modes of living established in and practiced by the community. Commenting on this subject, Professor Gumplowicz justly remarked:

"This constant dependency, little as it may be noticed, of the individual upon the power and the vital interests of his group is one of the most deplorably neglected by science in general and the historian in particular." [18]

In our judgment, Professor Gumplowicz, perhaps, lays too much stress upon the sociologic fact of the interrelation of the social entity and its parts, for it does not seem plausible to consider the act of the individual, that social atom, as a mere function of the social group. From the standpoint of both criminal law and criminology, such a thesis, if logically pursued, would altogether relieve the individual of criminal responsibility. If, as Gumplowicz believes, the individual in all his activities is entirely dependent upon the general motion of the social group to which he belongs, then, naturally, the very principle of individual imputation would appear fundamentally erroneous.

The ideas, ideals, religious beliefs, customs, political modes, economic factors and racial characteristics which go to make up the sociologic background, obviously affect in a most direct manner the habits and social concepts of the individual, including his moral character. Nevertheless, if the theory of the

[18] Professor L. Gumplowicz, "*Aperçus Sociologiques*," p. 129, Paris, 1905.

all-embracing influence of society upon the individual were correct, persons belonging to one and the same social group, ought to be acting in a perfectly uniform manner. As a matter of fact, however, people living in one and the same community do act differently, for the simple reason that there are no two individuals whose physical constitution, moral sense, mental ability, together with the whole range of psychic impulses and propensities, are equal.

37. Collective and Individual Psychology in the Formation of the Criminal Propensity. Crime, as every other social phenomenon, derives its origin from two separate, although closely affiliated, sources:

a. the collective psychology of the social group to which the individual belongs and which in its everlasting motion produces social environment, and

b. the individual psychology of the criminal himself.

No matter how near the relationship between these two realms of psychology may be, both have an independent existence of their own. Whereas, physically, collective psychology is dispersed among a multitude of individuals, forming the political entity, — individual psychology is necessarily localized in one person who constitutes a biological entity, apart from the combination to which he belongs socially.

Jurisprudence frequently takes into account the fact that the individual criminal impulse may derive its origin from the collective psychology of some particular class of society. Accordingly, the punishment for the same offense imposed upon a delinquent, belonging to one class, may be heavier or milder than that conferred upon a person, belonging to another class.

Thus, on the strength of Sect. 169 of the Russian Statutes of Punishments imposed by Justices of the Peace, simple larceny was punished with three to six months imprisonment; the same act, having been committed by a nobleman or a member of the clergy, was punished with three to six months imprisonment and, in addition, was followed by the loss of certain civil rights (Sect. 1656, Code of Punishments, Ed. 1885). In the

same way simple misappropriation of funds, in the first case was punished with three to twelve months imprisonment (Sect. 177, Statutes of Punishments imposed by Justices of the Peace), while the punishment therefor imposed on a nobleman or a member of the clergy, in addition to the same term of imprisonment, entailed the loss of certain civil rights (Sect. 1682, Code of Punishments, Ed. 1885).

In other words, the old Russian law, in some instances, drew the distinction between the privileged and non-privileged classes of society, inflicting upon the members of the former more severe punishments.

However, not only is it proper, but it is obligatory to consider the individual psychology of the criminal and his personal mental attitude towards the perpetrated act, inasmuch as this psychic factor always has a decisive bearing upon the *corpus delicti* itself.

38. **Individual Psychology and *Corpus Delicti*.** The Penal Law of the State of New York (Sect. 240) defines assault in the first degree as follows:

"A person who, *with an intent to kill* a human being or to commit a felony upon the person or property of the one assaulted, or of another,

1. Assaults another with a loaded fire arm, or any other deadly weapon, or by any other means of force likely to produce death; . . . is guilty of assault in the first degree."

According to this definition, *the intent* or *animus* to kill a human being, or to commit felony upon a person or property, is necessary in order that a deed may be treated as an assault in the first degree.

The consummation of a number of other crimes equally is made dependent upon the element of intent, the lack of which eliminates the conception itself of the particular offense. Thus, the intent to destroy a building by fire is requisite to arson, while, on the strength of Sect. 225 of the Penal Law of the State of New York, if circumstances show beyond a reasonable doubt, that there was no such intent, the deed is *not* arson. The moment, however, the question of intent is raised, all kinds of practical problems associated with *individual* psychology

come to the foreground. Nor is there any other way of solving these problems than by analyzing the complex psychic process taking place in the individual " ego."

Another instance: in the State of Idaho all persons are considered capable of committing crimes, except those belonging to the following five classes:

1. *Children under the age of fourteen*
2. *Idiots*
3. *Lunatics and insane persons*
4. *Persons who committed the act or made the omission charged under ignorance or mistake of fact which disapproves any criminal intent*
5. *Persons who committed the act charged without being conscious thereof.*[14]

Again, in this case the law correctly provides for impunity of otherwise punishable acts, if they are committed either without any criminal intent or in a mental state precluding individual imputation.

The mental attitude of the individual towards the act he perpetrates is, of course, of paramount importance. Professor Charles Mercier, whose studies on the different phases of insanity are well known, makes this assertion.

" . . . To incur responsibility by a harmful act, the actor must *will* the act; *intend* to harm; *desire* primarily his own gratification. Furthermore, the act must be *unprovoked,* and the actor must *know* and appreciate the circumstances in which the act is done." [15]

Whether all these rational elements: intent, desire of self-gratification and knowledge of the circumstances in which a deed is performed are really *always* essential to the principle of criminal responsibility is a matter open for discussion. Yet the fact is undeniable that every crime entails two ranges of symptoms:

a. Formal symptoms which distinguish one category of crimes from every other, and

b. the *inner* motives prompting a person to perpetrate those

[14] Comp. Statutes 1919, Sect. 8090.
[15] Charles Mercier, M.D., " Criminal Responsibility," p. 177, N. Y. 1926.

distorted acts which, combined, mean the consummation of a specific crime.

This being so, it is inconceivable how the phenomenon of criminality in general can be properly understood and successfully treated without taking into consideration the mental equipment of the delinquent and inquiring into the condition of his nervous system.

39. Criminal Intent and Abnormal Mental States. It is only the individual psychology which is capable of giving a correct answer to the cardinal question: whether an act, *in se,* constituting a crime, was perpetrated by a person mentally sane. Dr. White in pointing to this phase of the problem says:

"The immediate situation back of the criminal act of stealing may in one case be poverty; in another a kleptomaniacal obsession (neurosis); in another the disintegration of the personality wrought by alcohol (alcoholism) or syphilis (paresis); in another it may be the expression of a maniacal lack of restraint (mania-depressive psychosis); in another the failure of development of the social instincts (mental defectiveness); while in another it may be due to lack of education and the influence of dominating and evilly disposed associates; conditions which are as widely different as can easily be imagined but which all issue in an act capable of the same statutory description." [16]

On the other hand, the significance of individual psychology, from the standpoint of both criminology and court procedure, becomes still more apparent if we consider that *insanity* and *criminal irresponsibility* are not identical terms. As Dr. Glueck states:

". . . An insane person is not necessarily exempt from criminal responsibility, but . . . his exemption depends entirely upon whether or not his insanity satisfies the legal tests or criteria of irresponsibility devised for such cases." [17]

Even with reference to dementia, entailing an almost complete decay of the cerebral system, psychic tests discern dif-

[16] William A. White, M.D., "Insanity and the Criminal Law," p. 25, New York, 1923.

[17] S. Sheldon Glueck, L.L.M., Ph.D., "Mental Disorders and the Criminal Law," p. 275, Boston, 1925.

ferent degrees of the loss of mental faculties, some of which in no way justify legal irresponsibility. Nor is the so-called "morbid criminal propensity" a factor which, in itself, is sufficient to consider a person irresponsible for the crime committed as a result of such a tendency. In the State of New York a morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the wrongfulness of such acts, forms no defense to a prosecution therefor.[18]

It is obvious that in all the cases referred to, collective psychology furnishes no criteria whatsoever on the question of imputation or non-imputation of crimes; the judge, consequently, is compelled to look for the solution of this practical problem in the domain of individual psychology.

40. Criminal Impulse and Inhibitory Influence of Social Environment. In the way of a general statement, it may be observed that, while social environment with its collective psychology does exercise a constant and strong influence upon the individual member of the group, still the pressure, thus brought, reacts differently on the members of the same group and, consequently, generates different psychic results.

It has been noted that both adults and adolescents, as a rule, experience some difficulty in perpetrating a criminal deed for the first time.

Tradition and moral principles, commonly adhered to by society, form a sort of psychic barrier, the transgression of which requires a certain amount of audacity.[19] The individual real-

[18] Sect. 34 of the Penal Laws of the State of New York.

[19] This remark may raise the more general question as to how and under the influence of what factors human behavior in modern society is moulded. In this connection the interesting formula of Dr. Edward Kemf ought to be recalled. He says: "As a personality develops and compensates for one disappointment, and then meets with a second crisis and again compensates or distorts itself, the complex affective makeup may be formulated as:

Manifest Wishes
over
Later Repressed Wishes
over
Adolescent Repressed Wishes
over
Preadolescent Repressed Wishes
} Resistance (environmental) = Behavior.

See "Psycho-Pathology," p. 74, St. Louis, 1920.

izes that the moment he commits the prohibited deed, a profound change in the whole status of his life must inevitably take place. He knows, further, that the act is liable to provoke reaction on the part of society, in consequence of which he will be forced to seek refuge among those professionally engaged in violating the law. Equally, personal considerations, such as the probable loss of friendship with his associates, family ties, and so forth, tend to hold back the potential offender from perpetrating his first crime. Therefore, we usually find that between the time of the actual formation of the criminal instinct and the moment of the performance of the crime, there is a period of strong hesitation, during which a real psychic struggle takes place, the newly constituted morbid propension seeking to overpower the traditional principles of morality on which a normal person has been brought up.

Sometimes the elements of moral discipline finally triumph, and the spark of the criminal thought is extinguished, perhaps for ever. Still, if during this transition period, sinister influences from the outside grow in their intensity, and other casual circumstances should favor the perpetration of the crime, the transgression does take place, bringing the individual in conflict with society.

41. First Offense and "Professional Ties." The "newly born" criminal, naturally, endeavors to conceal his offense; during this important stage, immediately following the commission of the criminal act, he will resort to the experience of those professionally engaged in the violation of law. On the other hand, the persons who had been responsible for the cultivation of the morbid instinct in the debutant will readily guide his activities: they will help him to devise a plan enabling him to "cover up" the evil deed and profit therefrom. If it was a theft, the new "friends" will place the criminal in contact with a trusted dealer in stolen goods. If the transgression related to the category of sexual crimes, the gang will aid their comrade to establish his alibi. In case of an armed assault the companions will hide or destroy the blood-stained weapon, and so forth.

It is during this time, following the performance of the crime, that bonds of professional solidarity are being established between the beginner and the more experienced members of the criminal association. Owing to the fact itself that assistance is being given to him, the " professionals " acquire a peculiar hold on the new member of their gang. They know the secret which they are in power to divulge; they have given advice which has been followed. Consequently, the field for blackmail is prepared, and the way back is barred to the " freshman."

Once a man happens to have come in conflict with the existing order, he no longer can consider himself a reputable member of society; his former connections are almost automatically severed, while return to normal life is often made impossible. Furthermore, it is commonplace that a man with a criminal record is hardly ever able to find honest employment, even though he does make a determined endeavor to renounce his anti-social habits.

42. Irritation against Society as the Result of the Offense; Extreme in Anarchy. Strangely, the criminal offense sometimes originates a peculiar condition in the mind of the offender; notwithstanding the fact that the social injury had been caused by the criminal himself, he begins to experience a feeling of anger or irritation against society. In his famous " Memoirs from the Dead House," Dostoievsky, referring to his personal dealings with professional criminals, said:

" For a number of years I have never seen among these people the remotest sign of repentance, the slightest burdensome thought concerning their crimes, whereas the majority innerly considered themselves quite innocent. . . . The criminal hates society against which he had revolted, and nearly always believes himself to be right and society — wrong." [20]

The author's personal experience fully bears out this observation. On many occasions he has heard criminals, both men and women, bitterly complain of alleged injustice and even cruelty wrought upon them by society, although careful inves-

[20] Author's translation from the Russian.

tigation of their records rarely disclosed any facts which would justify such accusations.

Still more pronounced is this feeling of irritation against the social order among those who practice criminal anarchy. Whatever the theoretical " merits " of anarchism, the practical effect of its teachings is destructive in the extreme; it fosters the growth of egocentric and anti-social instincts, with the result that the individual begins to loathe all social order, every manifestation of social discipline, every element of government authority.

On this subject, Louis Proal, the eminent French jurist, uttered the following remarks:

" The hatred of the rich, the disdain of military service, the ardent longing for absolute equality, the craving for material happiness, the belief that the end justifies the means and that it is permitted to make the welfare of society dependent upon the massacre of the governing elements, all these revolutionary passions and sophistications, constituting the doctrine of anarchism, can be found in the theory of Babeuf, who under the Directory declared a merciless war against society." [21]

In this connection, it will be recalled that the association which was formed by Babeuf, under the pretentious name of " The Society of Equals," actually planned the assassination of " *all civil and military employees, all government agents and magistrates.*" In one of their proclamations this statement was made:

" All opposition will be overcome on the field of force. The opponents will be exterminated." [22]

The same conspicuously criminal attitude toward society was revealed during the trial of the French anarchist, Ravachol, who, among other things, declared to the court:

" It is necessary to suppress all people who stand in our way. . . . I committed the murder in order to satisfy my personal needs." [23]

[21] Louis Proal, Counselor of the Court of Appeals in Paris, " *La Criminalité Politique*," p. 46, Paris, 1908.

[22] On Babeuf, see interesting comments in Mrs. N. Webster's book, " World Revolution," pp. 53–58, Boston, 1921. [23] Louis Proal, *Op. Cit.*, p. 70.

Similar was the case of Lucheni, the Italian anarchist, who on September 10, 1898, assassinated in Geneva Empress Elizabeth of Austria. This murder demonstrated the morbid egocentric instinct, in its ugly nakedness. In the stenographic records of the trial we find a number of shocking and utterly cynical statements made by Lucheni. A rather significant point was brought out during the trial: Lucheni arrived in Switzerland with the intention of murdering the Prince of Orleans who was then staying at Evian-les-Bains. Not having found him there, Lucheni happened to have read in the newspapers that the Empress of Austria had arrived in Geneva, planning to spend several days in that city. He then proceeded to Geneva and killed Empress Elizabeth in cold blood for the sole purpose of satisfying his morbid anti-social instinct. This criminal frankly confessed that he hated public authority, as such, and that he committed his crime because the royal victim, in his opinion, personified the *principle* of the state. He also added that if he had been set free, he would renew his anti-social conduct.[24]

Finally, the instance of Ironimo Caserio, also an Italian anarchist, may be recalled. At the age of twenty-one he undertook a journey *on foot* from Vienne to Lyon (27 kilometers) with the specific idea of assassinating Sadi-Carnot, then President of the French Republic (1894). During the period of his subsequent incarceration he wrote most interesting memoirs in which he gave an exhaustive account of his general attitude towards the state, divulging intense hatred of organized society.[25]

Proudhon, Kropotkin, Reclu and Babeuf may have not contemplated the unfortunate consequences which their writings have caused in the minds of their underdeveloped, underaged and often half-illiterate pupils. These theoreticians might

[24] See P. Ladame and E. Régis "Le Régicide Lucheni," pp. 3–13, Paris, 1907.

[25] Extracts of Caserio's Memoirs in Russian translation are quoted in Professor D. A. Dril's book "Inquiry into Criminality and the Measures of Combating it," St. Petersburg, 1912. See also A. Lacassagne's "*L'Assassinat du Président Carnot,*" Lyon, 1900. An extremely interesting and well documented account of anarchist mentality is given by Dr. L. Libert, in his article "*Simon Morin, Régicide* (1623–1663). See "*Archives d'Anthropologie Criminelle,*" Vol. 27, pp. 161–188, 1912.

have earnestly believed that dynamite and murder are capable of bringing about social equality and universal happiness. Be that as it may, — the results speak for themselves: the inflammatory demagogy of these apostles of anarchy appeals to the egocentric emotions slumbering in all men, nourishing the lowest bestial instincts which, at times, reach the degree of a psycho-pathological obsession. This mental condition is responsible for many atrocious crimes, as those commited by Tatiana Leontiev, Moses Bogrow, Henry and Ravachol. Once acquired, the feeling of anti-social irritation steadily grows in its intensity and ultimately generates a species of anthropoids who aim at the complete destruction of civilization, and thus become the vanguard of international criminality.

43. Professional Criminality and Its Characteristics. Criminology is primarily interested in the phenomenon of *professional* or *habitual* delinquency to which brief allusion was made in the opening chapter of the present work. We shall now attempt to outline the chief characteristics of this class of criminals; it is all the more important as recidivist offenses, in a large measure, go to make up the bulk of criminality.

Because of the absence of systematized criminal statistics, it may be somewhat difficult to substantiate this statement with reference to the United States. But in France, for instance, where accurate records are computed from year to year, we find that in many categories of crimes recidivism plays a dominant, or at least, noteworthy part. Thus, for the period 1877–1881, the percentage of habitual criminals in the total number of those convicted by the higher courts for different transgressions, was as follows:

	Percentage
1. Murder by poisoning	16.7
2. Parricide	41.7
3. Homicide (in general)	42.2
4. Swindling	47.8
5. Arson (inhabited buildings)	41.5
6. Arson (non-inhabited buildings)	58.8

	Percentage
7. Theft by domestic servants	44.2
8. Theft accompanied by violence	62.4
9. Aggravated theft	71.7 [26]

Similar figures could be quoted for Germany, Italy and Russia.

These statistics, in the first place, show that recidivism is by no means confined to any one group of crimes. On the contrary, habitual offenders are found in practically every branch of anti-social endeavors.

Furthermore, among incurable delinquents we observe a process of professional differentiation, so that every variety evolves its own peculiar characteristics often differing substantially from the " ethics " and customs prevailing in other classes of criminality.

For example, the psychology of a forger has very little in common with that of a sexual murderer or burglar.

On the other hand, the disregard of society among the different groups of habitual delinquents does not always express itself in one and the same form. Frequently the anti-social proclivity is directed exclusively against some strictly circumscribed phase of the social order, without coming in conflict with its other ramifications. In this manner, a pickpocket might strongly resent crimes committed by means of violence, while the habitual murderer usually speaks with contempt of pickpocket practices. Nevertheless, in every class of the underworld the anti-social instinct, in one form or another, appears to be the keynote of criminal psychology.

44. Recidivism and Its Attitude Towards the State and Prison. As stated, the recidivist is inclined to hate government authority in general, — more specifically, the judge and the police, — because in his view, they symbolize the state with its enforcement of the penal statutes. But his dislike of prison is limited to the measure of personal discomfort inevitably connected with compulsory detention. Personal experience, how-

[26] This table is computed from figures cited by J. L. de Lanessan, "*La Lutte Contre le Crime*," pp. 60, 61. Paris, 1910.

ever, teaches him that much can be learned in jail; the knowledge acquired there is often found to be of great use in his future criminal work which is renewed automatically after the term has been served. As a matter of fact, it is in prison, where the delinquent population is artificially kept together, that the "beginners" receive their final training. Every inmate comes to the penitentiary with a vast experience of his own; this he conveys to his comrades, thus increasing the individual knowledge of criminal technique possessed by every member of the "lower depths."

While the occasional crime, as a rule, is largely the result of external circumstances, — the habitual crime is the outgrowth of a preconceived plan in which outward obstacles are being carefully removed by the criminal in order to bring the undertaking to a successful end. The recidivist diligently seeks the opportunity of committing a transgression, just as an honest person diligently tries to find employment.

By means of the criminal occupation, the professional delinquent "earns" his livelihood; naturally, then, — the commission of an offense never causes any remorse in him; quite the reverse: the better he succeeds in his task — the more his vanity is gratified. It should be also remembered that in the whole gamut of his feelings, ideas and convictions, there is nothing capable of arresting the egocentric tendency. Even fear of punishment rarely has a decisive significance in the moulding of his conduct. To this subject further reference will be made in Chapter VI. Here it should be only noticed that the full development of the anti-social propensity, which goes together with the atrophy of the social instinct, signifies moral degeneracy. This state of the mind, however, must not be mistaken for any form of mental disorder. Occasionally, it is true, we may find that the incorrigible offender suffers from some kind of mental disease; but it is an error to maintain that such anomalies constitute the root of criminal phenomena.

45. Opposition to Society and Criminal Associations. From the sociologic point of view it is easy to comprehend, why the anti-social instinct, so deeply rooted in the habitual criminal, originates in his mind an antithesis in the form of a strong

impulse, prompting him to associate with those who, likewise, belong to the delinquent strata of society.

The professional criminal cannot stand alone amidst a society that he hates and which, in turn, is hostile to him. Verily, isolation is a dangerous state for a person who ventures to challenge the social order. He is, therefore, compelled to coöperate with those who, by reason of their own morbid propensions and immoral conduct, are dwelling in discord with society.

The criminal technique itself makes such coöperation almost unavoidable, present-day crimes, because of their complexity, being rarely successfully performed by the solitary efforts of a single individual.

In the realm of economics the division of labor is an element characteristic of modern production. This factor, in its complete development, predetermines the specialization of all activities aiming at the accumulation of material wealth. The distinction between the three main economic branches: agriculture, industry and commerce, — as well as the differentiation of technical processes within every specific branch of industry, — are related with a third important element, that is, the division of labor. In the narrow sense, it means that every worker in a given line of production performs a limited number of simple operations, while the sum total of these mechanical acts has the finished product as its functional result.

The same principle of the division of " labor " applies to recidivism, affecting its practical modes of *operandi.* Here, too, the combined function of a series of coördinated acts, performed by a group of individuals, brings about the perpetration of a specific crime.

For this reason, in our day, more than hitherto, criminality is developing along the lines of efficiently organized gangs which sometimes are amply financed and managed on a strictly business basis.

It seems also that the biological law, by virtue of which beings of the same kind are attracted to each other, is fully applicable to the criminal portion of society. It is undeniable that individual criminals strive to organize innerly coördinated

groups or associations, according to their different "professional" characteristics and the chief aims pursued by the particular gang. In this way every crystallized criminal combination constitutes a peculiar microcosm, composed of egocentrically inclined individuals with strong *anti-social* tendencies directed against the dominant macrocosm, and equally pronounced *social* propensities which, however, are restricted to the membership of the criminal set itself.

46. Discipline in Criminal Associations. Within these delinquent associations, despite jealousy, rivalry and intrigue prevailing among their members, we observe a spirit of remarkable solidarity and even self-sacrifice.

The habitual criminal hardly ever betrays his comrades, and treachery is mercilessly repressed by the gang. As far as our own experience goes, we are inclined to think that in those rare cases when acts of recreancy do take place, they are usually the result of competition in love affairs, being instigated by the women, directly or indirectly associated with the gang ("*marmites*," "*filles en cheveux*," and the like). Otherwise, recidivist ethics require that prompt assistance be rendered to any member of the alliance who happens to be in trouble.[27]

In the same degree in which the professional criminal despises discipline, maintained and enforced by the state, he faithfully abides by the rules established within the delinquent group. The instinct of self-preservation causes him to be loyal to his professional associates, while the slightest deviation from the prescribed mode of conduct is severely punished by the chief.

47. Abadie Gang. Professor Reiss, in his book "*Police Scientifique*," reproduces the full text of the written regulations

[27] Horse-stealing was wide-spread in some regions of the former Russian Empire, and the peasants, as a rule, very indulgent towards criminals in general, were pitiless and cruel when they happened to catch a horse-stealer. In 1911, in a village near Pskov, a young gypsy horse-thief was seized by the farmers; they subjected him to horrible tortures, insisting that he disclose the names and whereabouts of his associates. All efforts proved futile: the thief did not betray any of his professional friends. Several hours later he died from wounds and blows inflicted upon him. Incidentally, it may be interesting to note that in Russia not less than 80% of professional horse-stealers were gypsies.

elaborated by the notorious Abadie gang which in the latter part of the nineteenth century terrorized the population of Paris. Its members were engaged in daring burglaries, sometimes accompanied by homicides. The whole document is of the greatest importance: it reveals many characteristic traits showing the perverted psychological nature of the professional criminal. In part it reads as follows:

"1. The association shall be composed of only fourteen members: twelve men and two women.

2. The men shall bear no arms other than those approved by the chief.

3. The arms shall consist of a six bullet gun, a hunting knife, a lead-loaded cane and metal knuckles.

4. Any member bearing other arms than those above described shall pay a penalty of ten francs.

5. Under penalty of death it shall be explicitly prohibited to commit any crime without the order of the chief.

6. No member shall have a permanent mistress; he shall have the right to have but temporary mistresses with whom, under penalty of death, no conversation shall be held.

. . . . . .

10. The members of the society shall be engaged in some kind of employment and shall refrain from frequenting saloons; any member who should be found intoxicated, shall pay six francs of penalty.

11. The members, whether employed or unemployed, shall receive a wage of six francs per day plus ten percent of every one thousand francs worth of stolen goods.

. . . . . .

15. Every member, and more particularly the chiefs, shall be supplied with false identification papers.

16. Every member shall punctually attend the meetings duly summoned. . . .

17. Every meeting shall be summoned either for the discussion regarding a theft to be performed or the punishment of the guilty member.

18. The chiefs shall have as their mistresses the two women, members of the gang. . . .

. . . . . .

22. Should a member be arrested, he shall confess to nothing and will seek to establish his alibi.

. . . . . .

27. Under penalty of death, it shall be prohibited to resign from the membership of the gang. . . .

. . . . . .

31. Gems obtained by theft shall be remitted to the chiefs. No one shall have the right to wear them or seek to sell same; such gems shall be unset and sold abroad.

. . . . . .

41. Every member shall take an oath on a knife, kept by the chief, promising never to disclose any of the clauses of these regulations." [28]

It is evident that not every criminal set possesses an organization as developed as that which the Abadie association used to have.

Some times, the makeup of delinquent gangs is a rather casual affair, and at the outset, no definite plans of action seem to unite their members engaging themselves mainly in incidental mischief. In Russia, for instance, such loose criminal formations operated in rural districts and were known as "field gangs." They were composed of habitual vagabonds who, similarly to gypsy clans, led a nomadic life.

48. Technical Efficiency and Recidivism. Nevertheless, professional criminals, especially those operating in industrial regions, recognize the necessity of having a well-equipped apparatus capable of serving the double purpose: —

a. efficiency in the performance of crimes, and
b. impunity of the members of the gang.

Much attention is being paid by recidivists to their technical outfit. C. F. Cahalane, formerly Inspector in charge of the Training School of the New York Police Department, referring to the burglar's equipment, mentions the following tools: (1) Bull's-eye lantern, (2) cutter, (3) padded chisel, (4) elec-

[28] Reiss, *Op. Cit.*, pp. 60–61.

tric motor and bit for boring safes, (5) " jimmies " of different sizes, (6) flashlight, (7) rope-ladder, (8) window catch tumbler, (9) special can opener, (10) stick of dynamite, (11) detonating cap and wires, (12) false keys and pick-locks.[29]

But even this enumeration is far from complete. Modern " safe-crackers," with their fancy for " applied " chemistry, are frequently resorting to the use of " thermit " (a mixture of aluminum powder, iron oxide and sodium peroxide) whose blast melts the strongest steel-plates. In this connection further, the burglar uses black spectacles for the protection of his eyes and heavy leather gloves to safeguard his hands against burns. Rubber gloves are also part of his requisite enabling him to pursue the work without leaving at the place of the crime his " visiting card " in the form of finger prints.

Still more elaborate is the equipment of modern counterfeiters, forgers and habitual murderers.

49. Criminal " Aristocracy " and the " Lower Depths." A line of demarcation should be drawn, however, between the scientifically equipped " aristocracy " (*haute pègre*) and the " lower depths " in whose ranks we find chronic alcoholics, paupers, prostitutes of the cheapest and most vulgar kind, vagabonds, and half-starved street-thieves. This is the underworld which was so brilliantly depicted by Maxim Gorky in his drama, bearing the title " The Lower Depths," and in many of his short stories.

The social significance of both classes is identical, since they both express the principle of social parasitism. Whether we be confronted with an ordinary crook, or a master-bandit of the Chapman type, we are equally sure to find him among the non-productive classes. He contributes nothing towards national wealth; he produces neither material nor intellectual values. His efforts are wholly destructive, while his very existence is dependent upon the constructive work of society as a whole.

However, the external characteristics of the two classes of criminality are quite different. Police authorities have given

[29] F. Cahalane, " Police Practice and Procedure," p. 146, New York, 1914.

much thought to the study of the peculiarities observed among both the upper and lower strata of the delinquent population. The works of Lacassagne, Locard, Gross, Reiss, and other criminologists, have dealt with this subject *in extenso,* and there is no need for reiterating here the results of their inquiries.

From the standpoint of the theory of criminology, it suffices to mention that the habitual criminal of the vulgar type is an urban by-product, whose activities, as a rule, are confined to some specific precinct or *quartier*. He is tied to the locality where he was born or in which he happens to domicile. He has an intimate knowledge of everything pertaining to this limited area, its " ins and outs," the little happenings of its every-day-life, with the street-gossip and petty quarrels. But beyond this horizon, his vision does not reach. Therefore, he is inclined to localize his work, and he rarely operates outside of the familiar district.[30]

In fact, the London *hooligan,* the Paris *apache,* the Marseille *nervi,* the Kharkoff *rakló* would feel embarrassed, — or to put it in French — *dépaysé,* — if he were transplanted from his native domain to some remote city.

It is also principally among the vulgar sets of criminality that different conspicuous and queer customs, like tatooing[31] and the usage of thieves' slang are habitually encountered. Havelock Ellis asserts that " the use of criminal slang marks recidivists," and he produces some very interesting exhibits of this delinquent dialect, one of which we here quote verbatim:

" I was jogging down a blooming slum in the Chapel, when I butted a reeler, who was sporting a red slang. I broke off his jerry, and boned the clock, which was a red one, but I was spotted by a copper, who claimed me. I was lugged before the beak, who gave me six doss in the Steel. The week after I was chucked up I did a snatch

[30] While the professional characteristics of the *apaches* are the same in all the districts of Paris, still it has been observed that the Montmartre *apache* rarely, if ever, operates in the Bastille district and vice-versa.

[31] On the historical significance of tatooing, see A. Lacassagne's article, *" La Signification des Tatouages chez les Peuples Primitifs," Archives d'Anthropologie Criminelle,* Vol. 27, pp. 783–810, 1912.

near St. Paul's, was collared, lagged, and got this bit of seven stretch." [32]

50. Specific Habits Among Professional Criminals. Speaking of plainly visible habits among criminals in general, and especially those belonging to the "lower depths," it should be remembered that every social set and virtually every profession, whether honest or dishonest, evolves its own social or professional characteristics. An attentive investigator oftentimes can determine the specific line of work in which a person is engaged, by merely observing his manners, physical traits, or psychic modes of conduct. Thus, the "sharper" has distinctly "expressive hands;" their softness is really noteworthy. This is easily explained by the fact that the cards used by the professional gambler can be marked only in an extremely subtle manner so as not to attract the attention of the other players. The "sharper" usually "spots" a card in the following manner; he punches the card with a pin and then inserts in the hole a microscopic piece of wax; having done this, he polishes the mutilated spot either with his fingernail or with an ivory knife. No "layman" can detect the mutilation. The "sharper's" hand, however, must have so soft a touch as to feel the marked place without looking at the card.

The same can be said about manual dexterity of the pickpocket which comes as a result of intensive training and continuous manipulations performed by the hands during the acts of stealing. In one of the European capitals it has been recently found that the training of a pickpocket, on the average, lasts several months. Among other things, the debutant thief is required to remove a handkerchief from the inner pocket of a coat to which many little bells are attached, without producing a single sound. Besides, the "scissors method" of picking can be successfully achieved, provided every finger

[32] The above passage is a pickpocket's history of his arrest which, translated by Havelock Ellis, means this: "As I was walking down a narrow alley in Whitechapel, I ran up against a drunken man, who had a gold watch-guard. I stole his watch, which was gold, but was seen by a policeman who caught me and took me before the magistrate, who gave me six months in the Bastille (the old House of Correction, Coldbath Fields). When I was released, I attempted to steal a watch near St. Paul's, but was taken again, convicted, and sentenced to seven years penal servitude."

on the hand functions independently from the movements of the other fingers.

Among the peculiarities denoting recidivists of the vulgar type it may be of interest to mention their tendency to inhabit certain precincts, or *quartiers,* by whole communities, so that the district thus chosen, soon becomes actually infested.

This phenomenon can be observed in every large city. So, in Paris, the recognized headquarters of the *apaches* are located in the famous *Quartier Montmartre* and also in the neighborhood of the *Boulevard Sebastopol.* The notorious thieves' center in Moscow was the Khitrov Market, and in St. Petersburg — the Alexandrowsky Market. On the other hand, some districts in the East End of London, because of their criminal reputation, for decades, have been receiving special attention on the part of Scotland Yard.

In a certain measure, this facilitates the task of the police. Still, the " communal " residence of the recidivists of the lower type is probably due to two equally important biological instincts of *self-preservation* and *preservation of the species.* In some instances the two impulses may come in conflict with each other.

The instinct of self-preservation usually causes the criminal to refrain from advertising the fact that he belongs to the underworld. Conspicuous connections with the delinquent strata are likely to increase the difficulties of the individual criminal and cause his premature arrest. Were the criminal guided by this instinct alone, he would probably seek to reside separately from his comrades.

However, in this case, as in many other biological phenomena, the instinct of self-preservation is supplanted by the reproductive instinct. The criminal must build his life in such a way as to assure for himself the active coöperation of other individuals belonging to the same kind. Indeed, the every-day-life of a recidivist is pregnant with hazards and different dangers. Living as he does, amidst a society which is hostile to him, he naturally wants to feel that in his immediate proximity there dwell persons who are sympathetic with his destructive anti-social activities.

If it be a case of an unexpected raid, he must have someone next to his own door who would be willing to shelter him as a matter of professional ethics. Or, in a case of a felonious assault, when he happens to be wounded, it must be a great satisfaction to realize that the neighbors will promptly come to his assistance by removing him to safe quarters and giving him first medical aid, without the accident becoming known to an outside physician or the police headquarters.

Thus, the instinct of preservation of the species impels the delinquent individual, even if it be at the sacrifice of his personal comfort, to live in " spotted " quarters, whose customs and inner organization provide adequate protection and tend to safeguard the criminal kind against extinction.

51. International Scope of Work Among the " Upper Strata." As regards the " aristocratic " groups of the recidivist class, they find it more opportune to shift their activities from one large city to another, in this way seeking to evade the vigilance of local police authorities. In days gone by, it was commonly known that the most daring burglaries in St. Petersburg were executed by the Warsaw gangs, while a number of sensational thefts in Paris hotels have been performed by habitual criminals (*rats d' hôtels*) residing across the Channel.

The criminal gangs of the *" haute pègre "* are gradually acquiring an international character. Such are the " sharpers' " associations whose members travel extensively on transatlantic lines. Illicit trade in narcotics is also conducted by efficiently promoted criminal associations, on a world-wide scale. Their agents and agencies are laboriously engaged in building up a wealthy clientele among the idle strata of society. The field of their operations includes fashionable hotels, gambling houses, artists' studios, boudoirs of the *demi-mondaines,* and so forth. The habitual hashish smoker residing in Vienna has no difficulty in finding a " smoking-parlor " in London or Madrid.

The local agent furnishes the client with the necessary addresses and passwords.

Probably the most difficult criminal profession, that of forging banknotes, naturally requires an elaborate apparatus in order that counterfeit money may be put in circulation simul-

taneously in different countries, before the forgery comes to the notice of the respective authorities. The same is true of " white slavery trade " which is controlled by an international criminal organization having its branches in Constantinople, China, Persia, Algiers, Odessa, Paris and Rio de Janeiro.

In other words, modern criminality, in its upper ramifications, is not exempt from the pronounced tendency of internationalism which is noticeable practically in every domain of human endeavor.

These remarks, it is hoped, will suffice to give the reader at least some idea of the general characteristics of professional criminality, without burdening his mind with technical details, — such as, the practical methods of recidivist work, the particulars of its organization, the system of its surveying, and the like, — which do not rightfully belong to a study devoted to the examination of the phenomenon of crime in its broader psycho-social aspect.

CHAPTER III. — ECONOMIC FACTOR

52. Scientific Reasoning and the Law of Causation. 53. Causation and Multiplicity of Causes in Reference to Social Phenomena. 54. Incidental and Causative Factors in the Psychic Constitution of Man. 55. Economics and the Socialist Theory. 56. Criticism of the Socialist Thesis. 57. Prosperity and Criminality. 58. Murders in the United States and England. 59. The Mode of Production and Criminality in Soviet Russia. 60. Bonger's Criminal Statistics. 61. Criminality and Prices of Commodities. 62. Concluding Remarks on Bonger's Statistics. 63. Restricted Meaning of Economics in the Aetiology of Crime. 64. Criminogenic Influence of Economic Instability. 65. Economic Instability in Relation to Social Habits. 66. Relative Significance of Economics in other Social Fields. 67. System of Bio-statistical Surveys of Criminals. 68. Multiplicity of Causes in the Genesis of Criminality. Literary Example. 69. Concluding Remarks.

52. Scientific Reasoning and the Law of Causation. The law of causation, according to which every fact that has a beginning, and exists, must have a cause, is an axiom; it therefore does not require further demonstration. Like any axiom of mathematics, it denotes a fundamental truth or general principle, applicable to all things pertaining to the matter on hand. Already Bacon had remarked that:

"Knowledge and human power are synonymous, since the ignorance of the cause frustrates the effect; for nature is only subdued by submission; that which in contemplative philosophy corresponds with the cause, in practical science becomes a rule." [1]

Consequently, every social fact must also have a cause which should be disclosed before the meaning of the phenomenon can be fully comprehended.

The mental operations of induction, relating to the analysis of social modes, are dependent upon the universal law of causation. For this reason, with reference to criminality, it was sought, first, to determine its underlying cause which we believed to be rooted in social dynamics and the permanent condition of social friction. This state itself may bring the individual in conflict with the public order, while without such a collision crime is inconceivable.

[1] Lord Bacon, "*Novum Organum*," p. 11, New York, 1922.

However, the principle of universal causation establishes but a general rule of reasoning which does not necessarily resolve itself into *material* truth. As any other rule of inference, it may be misinterpreted or erroneously applied. Many thinkers of olden times, — not excluding Bacon himself, — while asserting that every consequent must have an invariable antecedent, labored under the fallacious conception that a natural fact has only *one cause,* so that the very idea of the *plurality of causes* did not seem to have entered into their philosophical speculations.

As a result of countless discoveries in every field of knowledge and innumerable inquiries into the nature of things, modern science is no longer content with this narrow interpretation reducing a consequent to a single antecedent, or maintaining that every phenomenon is due to some specific unchanging condition, or set of conditions. On the contrary, in our day, it is a commonly accepted theory that every event is the compound function of *several* antecedents or collateral conditions, the concurrence of which is requisite to bring about the final effect.

Even though at present some biologists, adhering to the school of Claude Bernard, believe that causality is not a scientific concept and that it should be confined to the realm of metaphysics, it is not because they deny the law in principle, but merely in consequence of their desire to maintain experimental sciences within the study of *conditions,* instead of seeking to explain their *causes.* In mathematics, which is the science of co-existent facts, the law of causality has no practical significance, since, for example, the geometrical properties of a cylinder or a parallelogram are obviously not the effects of those qualities which serve to define them. Similarly, when we say that the sum total of the angles in a triangle is 2d, this figure itself can neither be considered the cause nor the consequence of 2d.

53. Causation and Multiplicity of Causes in Reference to Social Phenomena. But in the complex world of social relationships the law of causation, — and more particularly the conception of the multiplicity of causes, — are of momentous importance and practical value. Any fact or act deriving its

origin from the life of the collective masses of mankind *is always* the outgrowth of a large variety of forces and can never be attributed to one single symptom of human nature. Some of the component elements may be incidental, to a certain order of things, appearing in one or several events only, without entering into or forming part of analogous conditions and seemingly homogeneous occurrences. However, there are other materials which invariably seem to reappear in social matters belonging to the same class, and, therefore, we begin to regard them as causative factors, at least partly responsible for the genesis itself of the particular consequence. To cite but one example:

When we notice that soon after the outbreak of hostilities between two nations, prices of commodities begin to increase in both belligerent countries; and when, upon expanding our investigation, we find that the same condition takes place in every instance of war, we then are justified in our assertion that war is a factor, — although we may know *a priori,* — not the only one — causing or contributing towards the economic effect thus observed.

Crime, being a social phenomenon, is certainly not exempt from the general laws governing the life of society. Hence, the elements which go to make up the sociologic background of delinquency must have either a direct or indirect bearing upon the aetiology of the individual criminal propension, be it in the way of facilitating and accelerating its growth, or by conveying to it a specific form of expression. On the other hand, in the sum total of the constituent elements upon which social life is dependent, there are many which exert a neutralizing influence upon criminality, reducing the number of crimes and arresting the development of egocentric impulses.

Among the great multitude of different forces which, in their combination and mutual interrelation, produce the social order, we discern two distinct categories: (a) factors having but a remote affinity with criminal phenomena and becoming criminogenic agencies only when they are accompanied by other powerful elements moulding human conduct, and (b) factors yielding a permanent influence upon the crystallization of the criminal instinct.

The former should be considered as *incidental* and the latter *causative*.

54. Incidental and Causative Factors in the Psychic Constitution of Man. However, crime is not only a sociologic event, since public life is not its only source. We might say that while *criminality* in general is a social phenomenon, the individual *crime* is an act organically tied to the psycho-physical nature of the criminal himself. In this field we can also retain the classification set forth in relation to social factors. Thus, there are elements *incidental* to the perpetration of the criminal deed (color of eyes, weight of body, musical emotions, aesthetic conceptions, shape of the nose, etc.); consequently, they can claim no place among symptoms leading to the genesis or forming part of the delinquent instinct. On the other hand, we are met with characteristics so closely affiliated with the structuralization of morbid impulses, that their very presence almost predetermines a specific mode of behavior, which is criminal *in se*.

These properties, then, must be treated as causative or distinctly criminogenic psycho-physical conditions.

In addition to the social and psycho-physical causes, other facts may enter into the aetiology of crime. Such, for instance, are physical influences in the broad sense (geological, meteorological, climatic data, etc.), as well as ethnographic factors, including the racial symptom.

It will be readily conceived, however, that the features belonging to the last two groups are not, in themselves, requisite to the formation of the criminal disposition. In this connection a number of instructive studies have been made by eminent writers, such as Ferri, Lombroso, Joly, Gernet and Foynitzky. For instance, in works dealing with delinquency the term " criminal calendar " is frequently mentioned, meaning that certain categories of offenses are likely to be on the increase during summer months and on the decrease during the cold season. Writers belonging to the Anthropological School seek to explain this phenomenon by the influence of temperature upon the human organism and its temperamental manifestations; whereas, the sociologists believe that the seasonal symptom in criminal dynamics is conditioned by social factors, either facilitating or

hampering the perpetration of some specific form of crime. While there is truth in both views, nevertheless, statistics furnished in their support seem to be inconclusive; only one observation, perhaps, may be scientifically proved, namely, that the geographic factor, with the spread of civilization, and the subjugation of the elemental forces to the conscious will of man, gradually loses its influence upon the functions of social life in general, and criminality in particular. Thus, both the physical and ethnographic forces may or may not have a bearing upon the commission of specific offenses, their influence, if any, being incidental. For this reason no attempt shall be made here to deal with these vague subjects. In this we are all the more justified as the principal aim of our study is an inquiry into the psycho-social character of crime.

It is the province of criminology to discover among the great multitude of facts and conditions, of which the social order consists, those generic classes of phenomena whose presence, on the one hand, tends to increase the volume of criminality *in toto* (sociologic phase), while, on the other hand, fosters the development of the egoistic impulses, constituting the psychic foundation of the criminogenic states (psychological phase).

As regards the sociologic symptoms, they are examined here in the following order:

a. Economics (Chapter III, pp. 55–69).
b. Religious influences (Chapter IV, pp. 70–78).
c. The Factor of the Family (Chapter IV, pp. 79–87).
d. Education (Chapter V, pp. 88–102).
e. The Press and Literature (Chapter V, pp. 103–111).
f. Legislation (Chapter VI, pp. 112–123).
g. Enforcement of the Criminal Law (Chapter VI, pp. 124).
h. Inadequate methods of criminal detection (Chapter VI, pp. 127–133).

While within the framework of a social order other factors, besides those enumerated, may at times exercise a sinister influence upon the growth of delinquency (strikes, wars, etc.), it is believed that the range of phenomena, covered by our analysis, embraces the more typical causative elements of criminality,

enabling the student to form a satisfactory notion of the aetiology of crime. More particularly, some of the methods, adopted in the course of the present study, may prove suggestive of new principles of inquiry into the complex nature of the subject in question.

A. *Economics*

55. Economics and the Socialist Theory. The assertion that economics play an essential part in the life of human society is a truism.

The economic factor also enters prominently into the intricate process of the awakening and growth of the criminal disposition. Among the Russian criminalists, Professor Sergievsky was probably the first to point out that pauperism, for instance, has an important bearing upon delinquency.[2]

Long before Ferri, Kautsky, Turati, Bonger and other socialist writers had formulated their theories, and also prior to the origin of the Positive School of criminology, Dostoievsky, in some of his novels, for example, "Memoirs from the Dead House," "Crime and Punishment," "The Demons," and "Brothers Karamazov," emphasized the close affiliation between poverty and crime; however, he did not overestimate the role of this or any other economic symptom in the mysterious process leading to the perpetration of a delinquent act.

It was largely under the influence of the Marxian theory of economic determinism that a number of criminologists, mainly in Italy and Germany, sought to translate the broad subject of criminality into the narrow terms of economics. The attitude of these writers towards the different problems of criminology, including the aetiology of crime, is derived from the materialistic ideas of Karl Marx, and, more specifically, — from that part of his doctrine which deals with the capitalistic mode of production.

William Bonger, one of the most faithful present-day adepts of this theory, states as follows:

"To make my thought clear I will once more call attention to the classic formula of this doctrine, originated by Marx and Engels,

[2] See "Uridichesky Viestnik," 1879, p. 11.

taken from the preface to the work, '*Zur Kritik der politischen Oekonomie,*' which I have already quoted in treating of the theories of Professor Ferri, 'In the social production of their life men enter into fixed, necessary relationships in production, independent of their will, relationships which correspond to a definite stage in the development of their material powers of production. The sum total of these relationships forms the economic structure of society, the real basis upon which the juristic and political superstructure is erected, and to which definite forms of social consciousness correspond. The form of production of the material life conditions the social, political, and intellectual life-process in general. It is not the consciousness of mankind that determines their being, but their social being that determines their consciousness.'" [3]

It is not the object of this volume to deal with the merits or fallacies of any particular economic theory. However, so long as certain ramifications of criminology have been made dependent upon the materialistic dogma of Karl Marx, it may be appropriate, even though in a very general way, to remind the reader of some grave errors in the premises of modern socialism which affect the deductions drawn therefrom with reference to the nature of criminal phenomena.

56. Criticism of the Socialistic Thesis. From the standpoint of philosophy, it is a mistake to attribute to any single factor, forming part of the social order, a decisive or all-embracing influence upon its manifold functions and social morphology in general. Methodologically, it is an *a priori* fallacy to consider that the sum total of all social phenomena can be explained by, or their origin derived from, *one* of its ingredients.

Again, we cannot refrain from citing John Stuart Mill, who, when alluding to the logic of moral sciences, firmly established the following conception of the nature of social things:

"Whatever affects, in an appreciable degree, any one element of the social state, affects through it all the other elements. *The mode of production of all social phenomena is one great case of Intermixture of Laws.* We can never either understand in theory or command in practice the condition of a society in any one respect, without taking

[3] William A. Bonger, "Criminality and Economic Conditions," pp. 244–245, Boston, 1916.

into consideration its condition in all other respects. There is no social phenomenon which is not more or less influenced by every other part of the condition of the same society, and therefore by every cause which is influencing any other of the contemporaneous social phenomena. There is, in short, what physiologists term a *consensus*, similar to that existing among the various organs and functions of the physical frame of man and the more perfect animals, and constituting one of the many analogies which have rendered universal such expressions as the ' body politic ' and ' body natural.' " [4]

The mode of production may be, and undoubtedly is, an important socionomic factor. However, other phases of economic life, as well as general standards of morality, religious ideas, political institutions, the system of law, together with geographic conditions and racial characteristics, equally exert a powerful compound influence upon society as a whole, each of these factors not merely increasing the sum total of the constituent elements, but subjecting the other factors, in their evolutive existence, to profound changes and organic transformation.

When laying down his theory, Karl Marx labored under the erroneous impression that the capitalistic mode of production tends to increase the volume of misery among the laboring classes, steadily bringing their wages and standards of living down to lower and lower levels. In this connection he asserted:

" . . . all methods for the production of surplus value are at the same time methods of accumulation; and every extension of accumulation becomes again a means for the development of those methods. It follows therefore that in proportion as capital accumulates, the lot of the labourer, be his payment high or low, must grow worse. . . . Accumulation of wealth at one pole is, therefore, at the same time accumulation of misery, agony of toil, slavery, ignorance, brutality, mental degradation, at the opposite pole, *i.e.*, on the side of the class that produces its own product in the form of capital." [5]

Comparing this theoretical statement with the *de facto* conditions in the United States, — a country with typical capital-

[4] John Stuart Mill, *Op. Cit.*, p. 586. Italics ours.
[5] Karl Marx, " Capital," Vol. I, pp. 708–709, Chicago, Ill., 1919.

istic production, — every unbiased student will recognize the fact that Marx's observations, at least with reference to the matter in question, are by no means infallible.

More specifically, referring to the workers' modes of living, we find most everywhere a clearly defined tendency of raising the wage-earners' standards to that of the middle classes, — a condition which is expressed in the wide-spread increase in the rates of wages.

In the United States the union scales, per week, full time, were higher in 1923 than in 1917, as follows:

	Percentage
Bakers	95
Bricklayers	95
Building laborers	115
Carpenters	120
Cement finishers	98
Helpers	153
Hod carriers	121
Painters	140
Plasterers	97
Laborers	128
Plumbers and Gasfitters	101
Sheet Metal Workers	126
Steamfitters	95
Helpers	178
Stone Masons	122 [6]

In metal trades, for the same period, the increase in wages fluctuated from 98 to 166 per cent, while in the printing and publishing trades — from 104 to 174.

In particular instances, like in the Ford Motor Company or the Goodyear Rubber Company, the accumulation of wealth on the part of the companies corresponds with a huge accumulation of savings and increased prosperity on the part of the workers.

[6] See "Union Scale of Wages and Hours of Labor," statistical data compiled by the U. S. Department of Labor, Bureau of Labor Statistics, Doc. 354, p. 10, Washington, D. C., 1924.

As stated, precisely the same condition with regard to the rates of wages can be observed virtually in every capitalistic country, whereas the only country in which, during the past nine years, wages have been steadily decreasing, is Russia, in spite, or perhaps because, of the fact that there the capitalistic mode of production has been abolished.

57. Prosperity and Criminality. Next, we come to another important phase of our investigation. While the rates of wages have been substantially increasing in the United States, and, general prosperity, during the last decade, throughout this country, has reached a fabulous mark, — criminality in the same period has broken all previous records, becoming a grave menace to public order.

There are many ways of proving the commonly recognized fact that prosperity has been steadily increasing in the United States. For instance, figures of the income tax paid during the period 1913–1923 may help to illustrate this point:

RETURNS OF NET INCOME BY YEARS:

PERSONAL.

Years	*Number of Returns*	*Net Income*	*Increase or decrease from year to year*
1913	357,598	$ 3,900,000,000	.....
1914	357,515	4,000,000,000	$ 100,000,000
1915	336,652	4,600,000,000	600,000,000
1916	437,036	6,300,000,000	1,700,000,000
1917	3,472,890	13,700,000,000	7,400,000,000
1918	4,425,114	16,000,000,000	2,300,000,000
1919	5,332,760	19,900,000,000	3,900,000,000
1920	7,259,944	23,700,000,000	3,800,000,000
1921	6,662,176	19,600,000,000	4,100,000,000
1922	6,787,481	21,400,000,000	1,800,000,000
1923	7,698,321	24,900,000,000	3,500,000,000 [7]

[7] Statistics of Income from the Returns of Net Income for 1923, p. 28, Treasury Dep't, United States Internal Revenue, Washington, 1925.

Another indication of the same condition can be found in the amount of savings per individual depositors throughout the United States during the years 1914-1924:

SAVINGS BANKS DEPOSITS

Average amount of each depositor in the bank during the years:

1914	$444.11
1915	442.74
1916	456.55
1917	476.70
1918	480.84
1919	516.26
1920	572.14
1921	560.45
1922	572.71
1923	592.11
1924	604.06 [8]

Despite these undeniable facts, the scale of criminality in the United States has been expanding in alarming proportions, so that it was reckoned that the actual money loss sustained by the American people, from crime, in 1924 amounted to some *four billion dollars*.[9]

[8] Statistical Abstract of the United States, p. 258, Government Printing Office, Washington, 1924.

[9] Mr. Mark O. Prentiss, one of the founders of the National Crime Commission, in a most instructive article entitled, "Economic Consequences of Crime," in the Manufacturers Record, Feb. 24, 1927, produces the following staggering figures pertaining to the year 1926 (United States):

Losses through fraud:		
Fraudulent securities	$ 500,000,000	
Embezzlements	150,000,000	
Forgeries	100,000,000	
Worthless checks	120,000,000	
Fraudulent bankruptcies	400,000,000	
		$ 1,270,000,000
Property losses through burglary, robbery, etc.:		
Transportation thefts	$ 500,000,000	
Thefts from warehouses, etc.	525,000,000	
Thefts from the mails	10,000,000	
Value of 12,500 murdered persons	125,000,000	
		1,160,000,000

Guy Thompson gives these interesting figures on the cost of crime in the State of Missouri:

"We found" — says this author — "that Missouri spends annually in the maintenance of the criminal courts, the prosecutors, police, penitentiary, reformatory, and other agencies instituted to protect the lives and property of her citizens, approximately $9,200,000.00.

. . . . . .

The property losses alone from the depradation of criminals have been placed by competent authority at $85,000,000.00 annually. So that it is probably not far afield to place Missouri's crime bill close to $100,000,000.00 per annum, or about $30.00 for every man, woman and child in the State." [10]

The crime situation in Missouri is neither much worse nor manifestly better than in the other States of the Union; it probably represents the *average* status throughout the country as a whole. In order to demonstrate what these figures actually mean, it seems opportune to take into account the following comparative statistics:

In 1919, in France, with her population of about 39,000,000 there were in all but 29 highway robberies, while in St. Louis, the number of these particular crimes was 1,087, and in Chicago, — 1,862.[11] Placing roughly the population of Chicago at 3,000,000, it might be said that, were France, in this

Cost of law enforcement:		
Federal, State and municipal police and prison budgets	1,000,000,000	
Cost of criminal justice and legal expenditures	3,000,000,000	
		4,000,000,000
Waste of crime:		
2,000,000 criminals at $1500 a year	$3,000,000,000	
400,000 police, etc., at $1500 a year	750,000,000	
Commercialized vice	628,000,000	
Drug traffic	1,000,000,000	
Liquor traffic	1,000,000,000	
Value of 12,500 victims of liquor traffic	125,000,000	
		6,503,000,000
Grand total cost of all crime		$12,933,000,000

This writer puts the total cost of crime for the year 1926 at $16,503,000,000, not counting the moneys tied up in financial enterprises of a criminal nature.

[10] See Guy Thompson's article on the Missouri Crime Survey, in the American Bar Association Journal, issue No. 9, 1926, p. 630.

[11] Compare article "The Rising Tide of Crime" in the Literary Digest, August 15, 1925, p. 6

respect to keep pace with Chicago, it would have been necessary for her to have had approximately 24,206 robberies, or *830 times* more than she actually had recorded.

58. **Murders in the United States and England.** Now, another example: Owing to the World War, many European countries have been going through extremely hard times, and still are in the iron grip of an acute economic crisis. This applies also to Great Britain, which is, and has been, for the last seven years, confronted with alarming unemployment and other pressing industrial problems. However, the comparative figures in relation to murder show the following:

	1912	*1913*	*1914*	*1919*	*1920*	*1921*
28 American cities	8.3	8.8	8.5	9.1	8.5	9.3
England and Wales	0.9	0.8	0.8	0.8	0.8	0.7 [12]

Another interesting table makes this observation even more graphic:

Murder:	*1914*	*1915*	*1916*	*1917*	*1918*
England and Wales	92	81	85	81	81
Scotland	8	12	9	6	information missing

[12] Frederick L. Hoffman, L.L.D., "The Homicide Problem," p. 72, Newark, 1925. His figures for 1924 reveal the fact that in some American cities the rate of homicides per one hundred thousand was still higher. Thus:

McKeesport	10.3	Chicago	17.5
Cleveland	10.7	Petersburg	20.5
Washington, D. C.	11.1	Pueblo	21.2
Indianapolis	11.4	St. Louis	21.7
Orange	11.5	Mobile	21.8
Denver	11.6	Savannah	24.0
Pittsburgh	12.1	Louisville	25.0
Springfield, Ill.	12.7	New Orleans	32.5
Los Angeles	14.2	Nashville	36.0
Cincinnati	15.3	Jacksonville	58.8

As regards England and Wales, we read in "Criminal Statistics" for the year 1925 the following statement: "Many people will be surprised to learn that, whereas in 1857, with an estimated population of 19,256,516, the known homicides numbered 242, in 1925, with an estimated population of 38,890,000, the known homicides numbered only 318. . . . The net totals of all homicides recorded were . . . 1899–1903 (average) 342; 1925 (actual) 318, and this fall has occurred although the estimated population rose from 31,881,000 in 1899 to 38,890,000 in 1925." See English official "Criminal Statistics," His Majesty's Stationery Office, pp. 2, 3, London, 1927.

Murder:	*1914*	*1915*	*1916*	*1917*	*1918*
London	16	21	9	16	26
Liverpool	5	4	4	4	5
Chicago	87	77	105	91	95
Homicide: (murder and manslaughter)					
England and Wales	220	226	196	180	154
Scotland	39	57	53	29	information missing
London	46	45	31	39	37
Liverpool	8	8	8	9	5
Glasgow	11	23	18	11	9
New York	244	234	186	236	221
Chicago	216	198	255	253	222
Detroit			62	94	42
Washington, D. C.	26	25	24	24	27 [13]

If the Marxian theory were correct, criminality for the period examined here, ought to have been more pronounced in Great Britain than in the United States. However, the contrary is true; therefore, the Marxian theory cannot be correct.

The phenomenon, which, from the point of view of the socialistic school, appears paradoxical, nevertheless is quite in conformity with logic if we take into account that the mode of production is but *one* out of a great number of factors, bearing an influence upon the aetiology of crime.

In both countries, the United States and Great Britain, we have the same mode of production; in both countries the wage system is in force; in both countries the laboring class constitutes a large portion of the population, — and yet, in the conditions of criminality there is a cardinal difference which is inexplicable from the standpoint of economic determinism. The general premises of this doctrine being fallacious, the deductions therefrom are liable to be wrong. The falsity of the socialistic theory becomes still more apparent, if a parallel is drawn between the criminal situation in the United States and Soviet Russia.

[13] Compare Raymond B. Fosdick's " Crime in America and the Police," pp. 11–13, New York, 1920.

59. The Mode of Production and Criminality in Soviet Russia. There is no need for further elucidation of the fact that the curve of criminality in the United States has been evincing a marked upward tendency. However, as regards Soviet Russia, a few more words should be added. According to the official Soviet publication, "*Economicheskaya Jisn*," the wages in Russia fluctuated thus:

	Per Month
1913–1917	22 roubles
1918	8.99
1919	6.77
1920	7.12
1921	6.95
1922	8.22

(issue No. 264, 1922)

On the status of criminality in Russia for the same period, it seems advisable to quote from an exceedingly well documented volume, "The Sociology of Revolution," by Professor Pitirim Sorokin, a recognized authority on the subject. He states:

". . . Russia has hardly ever experienced such a growth of theft, swindling, forgery, bribery and other such crimes. 'We find bribery at every step,' says Lenin authoritatively. This evil attained such proportions that a special commission under Dzerdzinsky was appointed in 1921–23 to fight it; many people were shot, but to no avail. The corruption became general. Whether we call such actions criminal or not, does not matter; what matters is their enormous growth in number. . . . 'The number of crimes, theft and robbery increased, they are growing to tremendous proportions,' says a communistic newspaper. Infantile criminality, as compared to pre-revolutionary days, augmented in Petrograd 7.4 times. Similar pictures we see in the whole of Russia.'"[14]

Again, referring to sexual perversions, Sorokin, on the strength of official statistical data of the Soviets, points out the following:

[14] Professor Pitirim Sorokin, "The Sociology of Revolution," pp. 158–159, Philadelphia, 1925.

"Sexual licentiousness amidst the younger generation has attained unheard-of proportions, especially among the communistic youth. Every semblance of restraint is done away with. In the towns boys and girls of twelve to thirteen years old have sexual relations. . . . The figures quoted below will help us to get a faint idea of the existing state of things. The following number of girls had been deflowered. They were medically examined in 1919 at the Central Distributing Station in Petrograd, from which station they were distributed among different childrens' colonies, asylums and children's houses. Out of all girls under sixteen years old 96.7 per cent were deflowered. Even among the girls under ten years old ten per cent were deflowered." [15]

This information gives a general idea of the status of criminality in the country which has literally adopted the Marxian program. Now, we shall denote:

Increased Prosperity by ..... p.
Capitalistic mode of production by ..... c.
Increase in the rates of wages by ..... iw.
Economic destitution by ..... d.
Socialistic mode of production by ..... s.
Decrease in the rates of wages by ..... dw.

It may finally be said that the increase in criminality is *icr*. The equation, then, for both countries will be:

United States ..... p+c+iw=icr:
Russia ..... d+s+dw=icr,

meaning that during a given period in the United States prosperity has been increasing, the capitalistic mode of production having been in existence, with wages steadily increasing; whereas, during the same period, in Russia, economic destitution assumed large proportions, the capitalistic mode of production was abolished, the socialistic mode of production having been introduced in its stead, while the rates of wages kept steadily declining. However, as far as criminality was concerned, both countries evolved the same phenomenon, namely, the increase in the number of crimes.

[15] *Op. Cit.*, p. 86.

On the basis of the Marxian theory, we would thus have to come to the conclusion that:

$$p+c+iw=d+s+dw,$$

which reduces the whole proposition *ad absurdum.*

60. Bonger's Criminal Statistics. The tendency to explain the phenomenon of criminality by one casual symptom — the mode of production — caused many an error, even when statistics have been brought in for the purpose of conveying scientific semblance to the fallacious argumentations of the Marxian doctrinaires.

The work of W. A. Bonger, "Criminality and Economic Conditions," notwithstanding its undeniable value, contains a number of erroneous and arbitrary assertions which are due to the narrow interpretation of the abundant statistical material on the status of criminality in different countries.

We shall turn to a brief examination of some of his views: economic determinism is the cornerstone of Bonger's speculations, and he applies its formulas to every phase of his survey. Thus, he undertakes to prove "the enormous influence" of professional occupations on the aetiology of crime. In order to do so, he quotes a table taken from Prinzing's "*Soziale Faktoren der Kriminalität.*" (See page 82.)

Thoughtful analysis of this table discloses how little, sometimes, can be gained from social statistics when the causes of the formation of the criminal instinct have to be determined.

According to Prinzing, to ten thousand workers engaged in agricultural pursuits (class a. "independent") there were 7.3 simple and aggravated thefts, which corresponded to 7.1 simple and aggravated thefts among the liberal professions and persons in public service. Notwithstanding the fact that the professional characteristics of the two classes are different in every respect, the number of crimes of one and the same kind is virtually equal in both categories.

Again, referring to rape, we find that among the agricultural workers this crime appears as frequently as among the members of the liberal professions, *i.e.*, 1.67: 1.69. Almost the same condition, as regards the two classes in question, is observed in

GERMANY 1894–1896

Groups of Occupations	To 10,000 Persons over 12 Years of Age in each Group of Occupations there were															
	Crime in General	*Theft*	*Aggravated Theft*	*Embezzlement*	*Fraud*	*Rape, etc.*	*Incest*	*Insult*	*Violence and Threats against public Functionaries*	*Domiciliary Trespass*	*Perjury*	*Serious Assaults*	*Homicides*	*Malicious Mischief*	*Arson*	*Infanticide*
I. Agriculture:																
a. Independent..	75.1	7.1	0.2	1.5	1.7	0.21	0.10	19.1	1.5	2.9	0.22	14.1	0.02	2.3	0.08	0.03
b. Workers.....	142.1	28.9	3.1	4.8	6.0	1.67	0.18	9.8	3.1	6.8	0.31	36.4	0.05	6.5	0.36	0.37
II. Manufacturing:																
a. Independent..	129.9	7.1	0.5	5.1	5.4	1.20	0.17	27.8	3.3	5.3	0.32	17.5	0.02	3.2	0.09	0.05
b. Workers.....	234.5	32.7	5.8	10.2	10.2	2.98	0.20	19.4	13.1	13.3	0.32	57.5	0.06	12.0	0.19	0.14
III. Commerce and Transportation:																
a. Independent..	275.5	10.4	0.7	8.8	16.4	1.35	0.11	49.4	5.9	7.4	0.59	21.8	0.04	3.4	0.10	0.01
b. Workers.....	222.6	35.2	6.7	22.0	18.3	2.22	0.09	20.8	10.3	8.8	0.32	26.3	0.05	6.1	0.06	0.05
IV. Domestics	52.8	27.1	2.0	3.1	4.0	0.06	0.15	2.4	0.4	0.8	0.20	1.4	0.01	0.6	0.12	0.31
V. Public Service and lib. Professions .	79.3	5.9	1.2	4.8	5.6	1.69	0.06	20.0	2.0	2.2	0.14	6.6	0.01	1.6	0.02	0.00
VI. Population over 12.....	120.1	19.2	2.5	5.2	5.4	1.17	0.13	14.7	4.5	5.5	0.22	22.3	0.03	4.6	0.13	0.09[16]

[16] Bonger, *Op. Cit.* p. 441.

the criminal offense classified in the table under the vague description "insult," *viz.*, 19.1:20.0.

Turning to homicides, we are likewise confronted with a difficulty which can hardly be solved by mere reference to economic determinism. Let us examine four separate classes: (1) Persons engaged in agricultural pursuits (class a. "independent"), (2) those occupied in manufacturing (class a. "independent"), (3) domestics, and (4) members of liberal professions. Despite the pronounced distinction in the vocational status of these groups, the percentage of their participation in the commission of murders is virtually the same, namely, — 0.02:0.02: 0.01:0.01.

Furthermore, it is a well-known fact that the economic situation of domestics, as a rule, is probably the most unstable in the whole range of employment. Yet, we see that to ten thousand persons employed as servants, there were only 52.8 guilty of "crimes in general," as compared with 234.5 among the industrial workers, (II.*b*), and 275.5 — among agricultural laborers.

Disregarding all this, Bonger states:

"These statistics, probably the best upon the subject, tell the whole story to those who know how to read the figures. They constitute a proof of the enormous influence of the social factors in the aetiology of crime." [17]

Not denying the fact that a particular profession or public calling might have, and often has, a certain bearing upon the nature of crimes committed by its members, we must nevertheless, on the authority of the figures themselves, quoted by the eminent Dutch author, come to the conclusion that the difference in the professional occupation does not *necessarily* determine either the character or the number of the offenses executed by any of the groups in question.

On the other hand, social groups possessing corresponding economic characteristics, by no means perpetrate equal numbers of crimes of one and the same kind.

We shall take four more or less similar, professional groups belonging to the class of manual labor, namely:

[17] *Op. Cit.*, p. 443.

1. Agricultural workers (I.*b*)
2. Industrial workers (II.*b*)
3. Workers employed in Commerce and Transportation (III.*b*), and
4. Domestics (IV).

The analysis of their proportionate participation in four different classes of criminality: (a) embezzlement, (b) rape, (c) domiciliary trespass, and (d) serious assaults, demonstrates the following:

	1	2	3	4
a.....	4.8	10.2	22.0	3.1
b.....	1.67	2.98	2.22	0.06
c.....	6.8	13.3	8.8	0.8
d.....	36.4	57.5	26.3	1.4

What deductions can be drawn from such statistics " by those who know how to read figures "?

61. Criminality and Prices of Commodities. Nor can Bonger's data be considered conclusive when he endeavors to establish the parallelism between the movement of prices of cereals and the number of crimes against property:

Years	*Average Price per 200 Kilogr. in Marks*			*Arrests for theft to 10,000 persons*
	Wheat	*Grain*	*Rye*	
1882	22.57	23.63	18.81	26.0
1883	19.04	19.29	16.30	25.2
1884	18.44	18.75	17.17	22.7
1885	17.92	18.11	16.17	21.5
1886	17.68	17.94	14.69	20.7
1887	18.88	18.95	15.26	20.5
1888	20.23	20.64	16.19	20.3
1889	20.03	20.52	16.50	21.4
1890	21.43	21.71	17.97	21.2
1891	22.48	22.92	19.26	19.3[18]

[18] *Op Cit.*, p. 67.

These figures show that next to the year 1882, when the prices of wheat, grain and rye had reached the highest mark, comes the year 1891, wheat selling at 22.48, grain at 22.92 and rye at 19.26. The inference might be made that the particular year, 1891, should have yielded the next greatest number of arrests for theft. However, this obviously is not the case, inasmuch as during every one of the nine years, the number of arrests averaged from 20.3 to 26.0, — and only in the year 1891 it was 19.3.

It will be remembered that, according to Bonger's table, the prices of cereals reached the low level in the year 1886, wheat selling at 17.68, grain at 17.94, and rye at 14.69. Accordingly, from the standpoint of the Marxian theory, it would have been legitimate to suppose that the number of arrests for theft in that particular year was the smallest. But such a presumption is contradicted by the fact that in 1886, to 10,000 persons, 20.7 arrests for theft were made, whereas in the succeeding year, when the prices went up, the curve of thefts manifested a *downward* tendency, namely:

1887	20.5
1888	20.3
.....	
1891	19.3

Bonger himself reluctantly remarks:

"There is at first a certain correlation between the figures in the different columns, but there is none in the later years. It is very probable that the diminution in crimes against property is due, during these years, to a combination of favorable economic circumstances at that time." [19]

The arbitrary character of statistical references is further exemplified by a table, quoted by Bonger from the "*Kriminalstatistik*" for 1895, 1907, 1908, 1911 and the "*Statistisches Jahrbuch für das Deutsche Reich*," giving the prices of rye in marks per 1,000 kilograms in the relation to the number of persons convicted for crimes against property to

[19] *Op. Cit.*, p. 68.

100,000 of population. These figures cover the period 1882–1911.[20]

The lowest price of rye was in 1894 when it dropped to 117.8, as compared with the highest mark — 211.2 — in the year 1891. The comparison between the years 1891 and 1894 leads to this:

	1891	1894
Aggravated thefts	25	27
Fraud	54	60
Embezzlement	50	52
Receiving stolen goods	22	22

and only in the instance of simple thefts the year 1894 seemed more favorable, the proportion having been 216:198.

In the year 1882, the price of rye was lower than normal, *i.e.*, 152.2. But it was precisely during that year, that the greatest number of crimes against property was committed, namely, simple thefts — 250, aggravated theft — 28, receiving stolen goods — 26. Only with regard to fraud and embezzlement this year proved lower than normal, but then these two categories of crimes together represented but 26 per cent of the sum total of offenses against property.

During the year 1894, as stated, the price of rye was on the lowest ebb, while in 1882 — the prevailing price was about the average for the thirty years covered by the survey, *i.e.* — 152.3. Nevertheless, the total number of crimes against property per 100,000

for 1891 was 367
" 1894 " 359
" 1882 " 387.

There is also this important consideration to be borne in mind: Bonger's hypothesis that the scale of cereal prices necessarily affects the general status of crimes *against property*, is absolutely incorrect if the correlation is examined between the number of bankruptcies and frauds, on the one hand, — and the prices of rye, on the other. We shall again refer to Germany:

[20] *Op. Cit.*, p. 567

Years	I *Number of Convictions* *Frauds & Swindles*	*Bankruptcies*	II *Prices of Rye.* *Aver. Prices* *200 Kilgr. in Marks.*
1882	28.878	690	18.81
1883	28.930	661	16.30
1884	29.344	693	17.17
1885	28.788	675	16.17
1886	30.209	723	14.69
1887	31.013	780	15.26
1888	31.924	825	16.19
1889	34.953	807	16.50
1890	36.063	784	17.97
1891	39.147	920	19.26
1892	43.215	1.052	
1893	43.103	966	
1894	45.687	1.012	[21]

In column I, we see a steady increase in convictions for fraudulent offenses from 28.878 to 45.687, the curve assuming an upward trend, *regardless of any oscillations in the prices of cereals*. In this case, then, the socialistic theory conspicuously fails to furnish the student with any helpful method of dealing with the genesis of criminality, as a social phenomenon.

In the face of such contradictory evidence, it is impossible to formulate laws or draw conclusions with any degree of certainty as to the causative interrelation of economics and delinquency.

62. Concluding Remarks on Bonger's Statistics. We have extensively quoted from Bonger. Statistics which he himself produced in his book were analyzed here; this was done in order not to confuse the issues by introducing new figures and independent statistical data which would undermine the very foundation of Bonger's reasoning. Besides, this author is justly considered among the most eminent exponents of the socialistic creed in the field of criminology. Other orthodox Marxists,

[21] The figures indicating the number of convictions for frauds and bankruptcies are quoted from Rudolphe Laschi's book, "*Le Crime Financier dans la Sociologie Criminelle, l'Histoire et le Droit*," p. 208, Lyon 1901, while for the prices of rye we retain Bonger's figures. (See *Op. Cit.*, p. 67).

such as August Bebel, Karl Kautsky, and Lux, have added hardly anything to the scientific interpretation of the aetiology of crime.

Perhaps, somewhat more significant is Henri Massenet's survey of certain economic conditions purporting to have had a marked effect upon the volume of crimes committed during given intervals. Thus, in France, the years of general economic depression, accompanied by high prices of grain, invariably tended to increase the number of crimes against property, a fact which is particularly noticeable in the years 1828, 1847 and 1856.[22] But such figures, *in se*, do not constitute conclusive evidence, since many other factors might have been responsible for the phenomenon registered by the French criminologist. For instance, in 1828, after the defeat of the moderate Vilèlle Cabinet (November 1827) France was rapidly " nearing the rapids " of the July revolution of 1830. It was the epoch of bitter political strife between the two wings of parliamentary extremism, with Martignac symbolizing liberal mediocrity and alternatively seeking to please conservatives and radicals and gaining the support of neither.[23]

As for the years 1847 and 1856, even disregarding the increase in wholesale prices of grain, it is easy to comprehend, why the number of crimes might have considerably augmented. In point of fact, 1847 was the prelude to the revolutionary upheavals of 1848 (February and June), while 1856 is the epilogue of the Crimean war. It is noteworthy that wars in general, whether successful or not, always produce profound changes in the organic structure of the belligerent nations, the after-effect of war being often accompanied by increased social friction, promoting the growth of criminality.[24]

[22] Henri Massenet, " *Quelques Causes Sociales du Crime,*" p. 15, Lyon, 1893.

[23] See Jacques Bainville, " *Histoire de France,*" pp. 450–453, 99th Ed. Paris, 1924.

[24] Professor Gernet, as far back as in 1916, emphasized the distinction between popular and unpopular wars in their relation to the fluctuations of criminality. Thus, in 1866, Germany was engaged in a popular war with Austria. The number of crimes committed in Germany during that year showed a downward tendency despite rather unfavorable economic conditions which prevailed in that country. On the contrary, the 1866 war was very unpopular in Austria whose economic condition during that period was more favorable than in Germany. Accordingly, the number of crimes committed in Austria in

In other words, the economic symptom alone is incapable of furnishing a satisfactory solution of the problem of delinquency; the methodologic meaning of this factor is restricted to the range of phenomena directly originated by, or dependent upon, the laws of political economy. *Within this frame* the mode of production, the prices of cereals and similar data, may have something to do with the formation of the criminal propensity, — and then they should be recognized as criminogenic factors. But outside these narrow limits, other forces and facts come into play, either neutralizing or strengthening the influence of economics.

For this reason it seems advisable to examine the economic factor, not apart from, but in connection with other social phenomena, whose nature may be destructive or pathogenic. In this way, we think, it will be easier to ascertain the extent to which economics actually become a contributing factor in the formation of the criminal proclivity.

63. Restricted Meaning of Economics in the Aetiology of Crime. 1. In the first place, from the standpoint of methodology, the question of the particular mode of production should be classed among other equally important constituent elements of an economic system, such as economic geography, natural resources, methods of exchange, structure of the state budget, taxation, interrelation of import and export, and similar factors. There is no reason for considering the mode of production the determining agency in the economic organization of society. Consequently, it is also a fallacy to seek to attribute to this specific symptom the mystical and exclusive faculty of originating the phenomenon of criminality within a given community.

In so far as the mode of production actually exercises, or potentially may bear, a lasting influence upon social morphology

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that year showed an upward tendency. On the other hand, during a war it is not uncommon to observe a diminution of the number of crimes committed within the belligerent states. Compare these remarks with D. Rodin's article "Criminal Statistics during and after the European War in Different Countries," in issue No. I, "Problems of Criminality," published by the State Institute for the Inquiry into the Nature of the Criminal and Criminality, pp. 173–191, Moscow, 1926.

it should be taken into account in conjuction with other criminogenic influences. But it is evident that there are many crimes which have no affinity with economics in general and the system of production in particular. Such, for instance, are most of the sexual crimes, a large number of crimes against the person, criminal libels, perjury, many political crimes, the majority of quarantine misdemeanors, offenses against religion, and so forth.

2. It is further necessary to distinguish between what Joseph van Kan calls *static* criminality and its *dynamic* phase. The first term, according to this author, denotes the status of criminality in a specific country during a given moment, whereas, dynamic criminality comprises the evolution of criminal phenomena (crimes against property only), compared with economic fluctuations over a more or less protracted period. Van Kan justly remarks that " the latter aspect reveals a striking parallelism between the two curves expressing the elements of comparison." [25] The modification of the economic thesis, thus suggested, serves as an important corrective of the fallacies and exaggerations which permeate the writings of those adhering to the Marxian dogma.

3. Periods of economic depression do tend to increase the number of crimes against property. Nevertheless, the center of gravity of the whole problem does not necessarily rest in the rate of wages or in the prices of cereals. Poverty, taken in itself, does not produce criminals and breed crime. Quite different is the effect of pauperism on criminality.

Pauperism, which generates what in German is known as " *Lumpenproletariat,*" should not be confused with poverty. This term was defined by Professor Alvin Good, as the " state in which individuals are willing and desire to have others support them even though they are able to take care of themselves under normal conditions." [26] This definition is essentially correct, because it strongly emphasizes the element of *social parasitism* in the phenomenon of pauperism.

[25] Joseph van Kan, " *Les Causes Économiques de la Criminalité,*" pp. 10–11, Paris, 1903.

[26] Alvin Good, " Sociology and Education," p. 444, New York, 1926.

It was mentioned elsewhere that paupers belong to the idle strata of society, and in this quality, they go to make up the ranks of professional criminality, in its vulgar ramifications. Pauperism and anarchism are the extreme manifestations of social maladjustment; individuals who, for some reason, have degenerated to a condition of such moral perversion, are pre-eminently disposed to come in conflict with the social order. With the paupers it is not merely a question of unemployment. To be sure, they never seem to be engaged in any steady work; not that they are unable to find employment, but they are actually *unemployable*.

We find paupers among habitual thieves and burglars of the lowest kind, operating in the vicinity of market places and wharfs. They are spending most of their time begging in the streets or drinking in disreputable saloons and dens of vice. Alcoholism is the *alter ego* of pauperism, and in Russia these degenerates used to be called, not without humor, " honorary hereditary alcoholics."

On account of the utter deterioration of their physical and psychic constitution, resulting from syphilis and habitual drinking, these individuals rarely undertake the execution of those crimes which require much planning and reasoning as well as the use of " creative " energy. So, paupers are not, as a rule, inclined towards premeditated murders and daring expropriations (bandit acts). Their will-centers being inactive, it becomes rather difficult for them to devise clever schemes of criminal action. But the social *milieu* in which they dwell, often drags them into rough skirmishes when corporal injuries of fatal consequences are indiscriminately inflicted upon those involved in the fight.

The condition of pauperism, however, is not dependent upon or generated by any particular economic system. The " *Lumpenproletariat* " is a social group which is encountered in both the modern capitalistic countries, and the socialistic states, while Ancient Rome and the Middle Ages had their own social strata of incurable parasites and habitual paupers.

Speaking of crimes against property, it should be also noted that many such transgressions are perpetrated by persons whose

welfare is certainly above the average. It is rather uncommon to find genuinely poor persons engaged in the commission of fraudulent bankruptcies, insurance frauds, high class forgeries, bucketing, falsifications of bonds and treasury notes, cheating at cards, as well as offenses connected with the maintenance and operation of gambling houses. Still, it cannot be denied that all these crimes properly belong to the economic category.

The importance of the economic factor is, therefore, dependent not so much upon absolute poverty as on that relative symptom which puts a person in discord with the means at his possession and with the social standards of the group to which he belongs. In other words, a man may be wealthy but his needs and social appetite may be so excessive that he is driven to exact additional means by some unlawful methods.

This aspect of economics in their relation to the aetiology of crime, has been often emphasized and referred to mainly in the French School of criminology.

Massenet, who, among other authors, realizes the relative significance of wealth in the generation of criminal instincts, maintains, however, that both the poor and the rich, owing to the lack of mental organization, are incapable of counteracting the morbid impulses originated in the individual from without by the basic elements of social environment. In this respect Massenet is in agreement with Lacassagne's theory, according to which the instincts are localized in the posterior part of the cerebral hemisphere, supposedly directly subjected to the environmental influences. Still, this conception is by no means generally recognized as true by either criminology or neurology, since it is founded upon the fallacious principles of localization, propagated by phrenology.

64. Criminogenic Influence of Economic Instability. 4. Among the unfavorable economic factors exercising a profound influence upon the origination of criminal propensities, is the *instability of the individual budget*. The symptom is applicable to both the wage earners and the population in general. Wages may be at a low level, but so long as employment is

regular, the worker manages to devise a system of economy enabling him to provide support for himself and his family.

But, the moment when, owing to seasonal unemployment or to other economic fluctuations, production is curtailed, the individual budgets begin to experience the pressure produced by the crisis. This is the time when the number of crimes against property begins to increase, both absolutely and in relation to the total volume of offenses committed in a certain region.

In this respect, interesting data pertaining to one of the Bavarian work-houses have been made available.

It will be recalled that during the latter part of 1923, in Germany, as a whole, and also in Bavaria, economic tension reached its maximum degree. Since then, there has been a gradual improvement in the general situation, while by the middle of 1925, more or less normal conditions were restored in the major part of that country. With this consideration in mind, we shall analyze the table below showing the distribution of criminals, according to the nature of the offenses perpetrated by them from the latter part of 1923 until June 1, 1925:

	1923					1924											1925				
	August	*September*	*October*	*November*	*December*	*January*	*February*	*March*	*April*	*May*	*June*	*July*	*August*	*September*	*October*	*November*	*December*	*January*	*February*	*March*	*April*	*May*
Crimes ag. Property.	12	8	12	10	12	8	4	8	6	7	3	3	8	7	7	4	2	4	9	..	6	5
Perjury.....	....	1	....	1	1	..	..	1	..	7	2	4	2	3	1	1	1	3	..	7	4	6
Crimes ag. Morality.	1	2	....	....	1	..	1	1	1	2	..	..	2	1	5	3	4	4	..	2	1	1
Incest.....	....	1	....	1	1	..	2	..	..	2	2	1	..	2	1	2	2	2	1	6	..	..
Inflicting Injuries...	1	3	1	....	1	..	..	..	1	1	..	..	1	..	1	..	2	1	1	..	..	2
Political Crimes....	....	1	....	....	....	..	2	..	..	..	..	4	..	..	..	..	..	..	..	..	1	1
Homicides.....	....	..	....	....	1	..	..	..	1	..	..	..	..	..	..	2	..	..	..	..	..	..
Arson.....	....	..	....	....	....	..	..	..	..	..	..	..	..	..	..	1	..	1	1	1	..	1
Employment violations.....	....	..	....	....	....	..	1	1	..	..	..	..	1	..	..	1	..	..	..	..	..	..
Mutiny	....	..	....	....	....	..	..	..	..	..	..	..	..	..	..	..	..	..	..	1	..	..
	14	16	13	12	17	8	10	11	9	19	7	12	14	13	15	14	11	15	12	17	12	16[27]
	287																					

[27] *Monatsschrift für Kriminalpsychologie und Strafrechtsreform, Feb. 1926, p. 144.*

It will be seen that the number of crimes against property committed during

the last 5 months		1923	was	.....	54
" first 5	"	1924	"	.....	33
" last 5	"	1924	"	.....	29 [28]
" first 5	"	1925	"	.....	28 [28]

Unexpected budget derangements — we repeat — affect most harmfully not only the wage-earners but the middle class as well. For instance, periods of stock exchange panics, when substantial fortunes are wiped out over night, are bound to cause grave changes in the modes of living of those directly or indirectly affiliated with the market situation. The psychological effect of these shocks is always detrimental and often leads to the generation of criminal impulses.

65. Economic Instability in Relation to Social Habits. It should be further borne in mind that upon the budget depend the fundamental features of the life of every family. A steady income, be it in the form of wages or derived from other sources, is requisite to the formation of steady social habits. A person becomes accustomed to spend so much for rent, food, clothing, recreation, etc. Day by day, month by month, he follows the chosen path, endeavoring to keep his expenditures in strict conformity with his income. Slight or gradual increase in the budget does not cause any noticeable changes in individual psychology, merely enabling a person either to save more or make life somewhat more comfortable.

But habits once acquired are not easily abandoned; in fact, they determine the mechanical arrangement of every-day-life, becoming the foundation of so called professional mannerism, and evolving a whole gamut of fixed psychic attitudes and deeply rooted inclinations.

" Habit — says James — is thus the enormous fly-wheel of society, its most precious conservative agent. It alone is what keeps us all

[28] It is necessary to correct the German classification by adding to the number of crimes against property the number of arsons, because according to both the American and European conceptions of arson, this crime for its consummation requires the destruction of property by fire, and, consequently, this element is requisite to the *corpus delicti* itself.

within the bounds of ordinance, and saves the children of fortune from the envious uprisings of the poor. It alone prevents the hardest and most repulsive walks of life from being deserted by those brought up to tread therein. It keeps the fisherman and the deck-hand at sea through the winter; it holds the miner in his darkness, and nails the countryman to his log cabin and his lonely farm through all the months of snow; it protects us from invasion by the natives of the desert and the frozen zone. It dooms us all to fight out the battle of life upon the lines of our nurture or our early choice, and to make the best of a pursuit that disagrees, because there is no other for which we are fitted, and it is too late to begin again." [29]

However, if the budget becomes suddenly deranged, painful experiences begin to affect the individual who finds himself compelled to give up one habit after another; this, naturally, causes in him a feeling of general depression.

In addition, the hardships wrought upon a person in consequence of the curtailment of the budget, promptly place him in discord with that set of the community to which be belongs. Certain customs, commonly practiced by its members, assume the nature of social obligations, and their neglect, on the part of the individual, inevitably results in his social degradation. With the development of this condition, the state of mental worry becomes more acute; the man begins to realize that both he himself and his family are, as it were, outcasts or *déclassés*. At this point the crisis is reached, and powerful criminogenic impulses, at any time, may be set in motion.

In so far, then, as marked increase in prices of commodities actually affects the individual budget, this factor must be recognized as a distinct criminogenic influence. This observation, naturally, is not confined to the rise in the prices of necessities: the same anti-social result is produced by unemployment, strikes, causing unemployment, deflation of currency, after-war effects, and so forth.

Still, if principles of moral self-defense are firmly established in consciousness, the elements of character being sound and adequately organized, then, there is a fair chance of successfully overcoming the morbid propensities.

[29] Professor Wm. James, "Habit," pp. 51–52, New York, 1890. The Psychic Elements of Habit-Formation are discussed in Part II, Chapter VII, §§ 165–169.

The real danger arises when the fundamental rules of the moral code have been previously destroyed or are altogether non-existent. Children of recidivist parentage, or people whose morality, owing to unfavorable family conditions or evil influences in school, is utterly disintegrated, are particularly apt, under the sway of such unpropitious economic circumstances, to fall into the criminal ranks.

But even so, the economic factor enters into the aetiology of crime only *as one of the many* ingredients and, consequently, does not exert an all-embracing influence upon the formation of the criminal disposition.

66. Relative Significance of Economics in Other Social Fields. What is true regarding crime, and the heterogeneous factors bringing about its genesis, is equally applicable to social phenomena in general. In the way of illustration, it may be interesting to look into the results of Percy Kammerer's investigation of the causative factors in 500 records of illegitimacy shown in the table as it appears on the next page.

Here, too, we discover a wide range of different elements, the combination of which generates the phenomenon of illegitimacy.

67. System of Bio-statistical Surveys of Criminals. Thus, the one-sided or simplified interpretation of crime is neither correct theoretically nor helpful in the practical work of the administration of criminal justice.

Realizing this basic fact, in some of the European countries bio-statistical surveys of prison inmates have been made obligatory. These systematized records furnish exhaustive data on the psycho-physical status of the criminal, the history of his parentage, as well as the social, political and economic conditions, which accompanied the perpetration of the specific offense.

In Bavaria, for example, the officially adopted questionnaire for every individual criminal, serving a sentence in a state prison, comprises 177 questions, which must be answered. With such information made available, it becomes possible to establish an accurate conception of the more important character-

CAUSATIVE FACTORS IN ILLEGITIMACY

Groups of causative factors	*Number of times a major factor*	*Number of times a minor factor*	*Total number of times appeared as factors*
Bad environment	29	56	85
Bad companions	8	136	144
Recreational disadvantages	..	22	22
Educational disadvantages	..	20	20
Bad home conditions	194	158	352
Early sex experience	..	25	25
Physical abnormality	6	53	59
Sexual suggestibility	27	16	43
Sexually suggestible by one individual	38	4	42
Abnormal sexualism	1	1	2
Mental conflicts	3	2	5
Defects of heredity	..	48	48
Assault, rape, incest	14	..	14
Not analyzed	13	..	..
Total	333		
Suggestive of mental abnormality and not included for this reason	167		
	500 [30]		

istics of the delinquent and his criminal deed. The survey embraces the following principal subjects:

1. Family record.
2. Personal record of the criminal.[31]
3. Psychic status of the criminal (the so-called Belgian scheme supplemented by the Ewald psycho-clinical observations).

[30] Quoted by Stuart A. Queen and Delbert M. Mann, "Social Pathology," p. 162, New York, 1925.

[31] The following information is sought in connection with the person of the delinquent:

PERSONALITY OF THE DELINQUENT

1. Home and out-of-home education (where, why, how, how long?)
2. Likely educational influences (favorable or evil) upon the moral, mental, social, economic, criminal development or adjustment (religious observance in

4. Bio-metrical research.

5. Bio-statistical survey.

6. The psychic and bio-statistical survey of the descendants of the criminal.

The methods of studying the problem of the aetiology of crime, as set forth in Bavarian legislature, especially in cases where the plea of insanity is raised, are not essentially new. The Russian Code of Criminal Procedure of 1864 (Section 353) contained a provision making it obligatory for the prose-

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the family; instigation to begging, theft, indulgence in alcoholic drink; discord between parents, pauperism).

3. School attendance (regular or irregular, if irregular — why?)

4. School record (non-promotion, marks in intelligence tests, non-attendance because of sickness, deliberate non-attendance, necessity to earn livelihood).

5. Choice of profession (time and record of general training, apprenticeship, master's test, interference with training).

6. Change of profession (time, cause, advancement or drawback in social standing).

7. Preservation, loosening, or loss, of connection with family.

8. Vagabondage (beginning and duration, reason therefor, work or begging during same; localities, countries and cities visited).

9. Enlistment for military service (year, time of active service, branch of service, record as soldier, participation in the war, front or rear service, war record, decorations, punishment, wounds, shell-shock, hospital, war prisoner, time of dismissal).

10. Beginning and repetition of criminal activities, according to season, kind of delinquency, external or inner causes, juvenile delinquency, preferred form of delinquency; records during former prison terms.

11. Development of social and economic standing as independent adult. (Income, unemployment, change of employment, strike.)

12. Marriage: year, wife according to age, family descendance, physical, mental and moral propensities and domestic qualifications. Criminal record of wife. Was wife single, widowed or divorced? Is wife related to prisoner, if so — how? Has the marriage been satisfactory or were husband and wife separated or divorced; did wife die? In case of several marriages, the same questions should be answered for every wife, also time and cause of cessation of marriages should be indicated.

13. Children of the prisoner, according to number, given name, age, dates of birth and death, school records, mental and moral propensities, as well as social status, criminal record, professional standing, place of residence, number of own children, and other indications. All questions are to be answered for every child individually. Illegitimate and legitimate children, as well as children from several marriages are clearly to be distinguished.

14. Personal juvenile development of prisoner (walking, talking, scrofula, rickets, convulsions and fits, pavor nocturnus, children's diseases).

15. Later diseases, in particular venereal diseases, tuberculosis, nervous and mental diseases, convulsions and fits, length of time spent at health resorts.

16. Alcoholism (regular, according to circumstances and financial status, or periodical; behavior in the state of intoxication — gay, sleepy, violent).

cuting attorney (*Untersuchungsrichter*) to inquire into the family history of the arraigned, whenever there was ground to believe that at the time of the perpetration of the offense his mental condition was deranged. Analogous rules are incorporated in the German and Italian penal statutes. However, the Bavarian procedure is more complete, touching upon all the vital phases which tend to bring about the phenomenon of crime, and besides, it is not limited to the cases involving an alleged state of insanity.

Among other authors, Dr. William Healy suggested a splendid "Schedule of Data concerning Delinquents," comprising eleven classes which are of utmost interest to the criminologist seeking to comprehend the genesis of criminal phenomena. The scheme covers the following:

I. *Family History,* especially all aspects of heredity.
II. *Developmental History,* including antenatal conditions.
III. *Environment.*
IV. *Mental and Moral Development.*
V. *Anthropometry,* including photography.
VI. *Medical Examination,* particularly from a neurologic and psychiatric standpoint.
VII. *Psychological* — (a) Mental testing; (b) Psychological analysis.
VIII. *Delinquency.*
IX. *Diagnostic and Prognostic Summary.*
X. *Follow-up Records.*
XI. *Subsidiary Records.*[32]

68. Multiplicity of Causes in the Genesis of Criminality. Literary Example. In this way, the student is compelled to depart from the narrow paths of economic determinism and other one-sided inquiries, while, at the same time, he is guarded against entering the evasively broad avenues of "free-will" indeterminism. For criminality is obviously not a mere numerator of some economic denominators, as it equally is not an act detached from the laws of universal causation.

Crime, as any other psycho-social phenomenon, is produced

[32] See Dr. Wm. Healy, "The Individual Delinquent," pp. 53–63, Boston, 1924.

by the evolutive motion of many factors, whose complex interrelation is one of mutual permeation; only keen analysis is capable of determining with precision, where the influence of one constituent element ends and the province of another begins; whence a morbid impulse springs up and whither it is led in its blind groping.

Here, then, we find a method opening promising fields for impartial research; new avenues of inquiry which, for centuries, *instinctively* have been sought for by the great writers and poets of all lands.

It will be recalled that in world literature, the question of the formation of the criminal impulses has found its artistic interpretation in the works of many famous men of letters. To cite but such names, as Shakespeare, Tolstoy, Zola, Maupassant, Flaubert, Edgar Poe, Ibsen and Dostoievsky. The creative genius of these master minds invariably led them to approach the phenomenon of delinquency, not from the standpoint of narrow formalism, reducing delinquency to some *one* cause, but treating it as a broad social and psycho-physical fact, governed by a great number of heterogeneous factors which, in their everchanging combinations, generate the complex actuality of crime.

In this connection, the murder of Fedor Karamazov [33] by his butler and illegitimate son, Smerdiakov, is a classical example, how the problem pertaining to the aetiology of crime should be properly dealt with. Criminologists belonging to the school of economic determinism, would probably attribute this murder to nothing but the motive of greed (economic factor), which, to be sure, has its legitimate place among the criminogenic elements of which Smerdiakov's deed is a compound function.

Writers who think that the mode of production, or any other economic element, is the sole source of criminality, might even triumphantly point out to Dostoievsky's famous novel as a proof that the desire to steal the three thousand roubles, which Fedor Karamazov kept under his pillowcase, was precisely that factor which produced the crime.

[33] Dostoievsky's novel, " Brothers Karamazov."

As a matter of fact, however, Dostoievsky, whose knowledge of human psychology was unrivalled, clearly understood that any such shallow or arbitrary explanation of the intricate mental condition resulting in the discharge of criminal energy would have been utterly fallacious. The factors which caused the murder, according to the novel itself, are as follows:

a. Morbid heredity
b. Illegitimate birth
c. Epilepsy of Smerdiakov
d. The element of moral neglect in Smerdiakov's education
e. The obscene psychology of Fedor Karamazov
f. The destructive intellectual influence of Ivan Karamazov upon Smerdiakov
g. The covetousness of Smerdiakov
h. The disintegration in the Karamazov family
i. The loss of the religious ideal by Smerdiakov
j. The growth of the egocentric instinct, and
k. The desire to steal three thousand roubles.

The third, and last, talk of Smerdiakov with Ivan Karamazov, after the murder, is a brilliant summary of the psychic processes which finally found their outward expression in the execution of the murder.

Smerdiakov committed the crime in order to take the money. But having come in possession of the money, he hands it over to Ivan Karamazov. In response to the surprise expressed by the latter, Smerdiakov says:

"I don't need it at all. . . . Formerly I did have the thought that with this sum of money I shall start living in Moscow, or still better, abroad; yes, I had this thought, more particularly as 'everything is permitted.' You taught me the truth; in those days you told me many things: for if there is no eternal God, then also there is no virtue, nor is virtue needed at all. You told me the truth. Accordingly, I made up my mind."

The impulse of greed is there; but its significance is overshadowed by other motives which resolve themselves into a peculiar and morbid philosophy of immorality. All ethical

ideals of Smerdiakov are shattered by rationalistic maxims which rob the intellect of its sparkling vitality and make the human soul dry and selfish.

Ivan's own mind, deep and manifold as its manifestations are, is the product of those social strata which, in themselves, carry the germ of their own destruction. It is neither the lack of education nor the absence of mental ability that dooms them.

In the case of Ivan, we must admit that his thought, at times, at least, elevates itself to the snowy heights of wisdom where eternal calm should reign. For instance, such is his masterly interpretation of the decaying spirit of modern Christianity, when he narrates the "Legend of the Great Inquisitor." For here, indeed, — like in Vladimir Soloviev's "Three Conversations," Russian religious philosophy is not only profound but also bears the mark of genuine inspiration. Yet, in Ivan we witness a complete disintegration of all moral conceptions, with the result that an overwhelming egocentric tendency drags him into the dark depth of the criminal abyss.

Smerdiakov is Ivan's psychic shadow, and, as such, he follows and imitates his master. But in Smerdiakov's undeveloped mind, like in an inverted mirror, the philosophical ideas of Ivan assume the form of, and are converted into, mental caricatures and fragmentary misconceptions which he uses for the speculative purpose of vindicating his criminal intentions.

Here, the criminogenic factors, both social and psycho-physical, gradually develop into a mental condition which lends courage to trespass that almost invisible line which separates the two stages of the criminal act: the last momentary hesitation, and the last instantaneous decision to precipitate a tragedy.

69. Concluding Remarks. Reiterating, then, our brief remarks, we must say that crime in its dynamic aspect or its psycho-social origin and growth is neither the result of any one single antecedent nor even the arithmetical sum total of several constituent elements entering into the criminogenic process. For it must be borne in mind that these ingredients are not isolated and merely coëxistent states, mechanically brought together, but that they represent a complex correlationship of mutually permeative forces which, through their evolutive mo-

bility, bring the individual in collision with the social order (social friction), and thus generate a new phenomenon, called crime.

To make this thesis quite clear, let us now suppose that in a person contemplating the commission of an offense, three psychic states are present: c_1, c_2, and c_3, and that each of these factors develops in his consciousness a certain amount of moral resistance, which, translated into degrees, is expressed thus:

$$\left.\begin{aligned} c_1 &= 3 \\ c_2 &= 2 \\ c_3 &= 4 \end{aligned}\right\} = 9$$

For the sake of argument we shall further assume that this number of reactive degrees (9) is sufficient to safeguard the individual against committing the crime X, while any figure *below* 9 must have, as its function, the perpetration of the delinquent act. Presently we notice that a new factor — *n* — which is equal to 1, enters into our scheme. *In se, n* is neutral, or even capable, *under different circumstances,* of strengthening the system of moral self-defense, but when brought in contact with c_1 and c_2 its effect is to weaken the degree of resistance, reducing the former to 2, and the latter to 1, while its intervention does not effect c_3 at all.

Following the arithmetical method of simple addition, and disregarding the criminogenic influence of *n,* we may erroneously say that

$$c_1 + c_2 + c_3 + n = 3 + 2 + 4 + 1 = 10$$

In this way the intervention of *n* ostensibly produces no new results, the sum total of the degrees of resistance being 10, which does not generate X.

When, on the other hand, the criminogenic effect of *n* is taken into account, but the factors are treated as separate psychic states, we arrive at the following:

$$\left.\begin{aligned} c_1 + n &= 2 + 1 = 3 \\ c_2 + n &= 1 + 1 = 2 \\ c_3 + n &= 4 + 1 = 5 \end{aligned}\right\} = 10$$

Here, again, because of the mistaken method adopted in the analysis, we fail to grasp the nature of the process leading to X, or producing the specific crime.

The proper way, then, is to consider the constituent elements in their evolutive motion, *i.e.*, with such changes as are being created in consequence of *n* entering into their range. Indeed, this process is analogous to the phenomenon of catalysis in chemistry. For instance, granulated platinum makes the fusion of sulphuric anhydride with oxygen almost instantaneous. In our scheme *n* performs the role of the catalytic agent by accelerating the discharge of criminal energy. Thus, we come to the right formula which is:

$$c_1 + c_2 + c_3 + n = 2 + 1 + 4 + 1 = 8 = X$$

Unless this method is adopted in the study of the origin of individual delinquent impulses, — the actuality of crime must remain an empty and meaningless conception.

CHAPTER IV. — RELIGION AND FAMILY

A. *Religion*

70. Reasons for Introducing the Subject of Religion in Criminology. 71. Religion in Ancient Rome. 72. The Dawn of Christianity and the Middle Ages. 73. Socionomic Significance of Christianity. 74. Religion and Rationalism. 75. Complete Decay of Religious Ideals. 76. Religion in Soviet Russia and Mexico. 77. Ideational Contents of Morality and the Ultra-Rational Sanction. 78. Destruction of Religion and Its Effect Upon the Juvenile Mind.

B. *Family*

79. Family in Modern Society. 80. Family of the Past. 81. Sociological Notion of the Family. 82. Criminality and the Disintegration of the Family. 83. Endeavors to Destroy the Family from Without. 84. Soviet Divorce Law and Its Practical Effect. 85. Disintegration of the Family in the United States. 86. Criminogenic Results of the Disintegration of the Family in the United States. 87. Colonel Bovill's Report.

70. Reasons for Introducing the Subject of Religion in Criminology. In the preceding chapter an attempt was made to explain why the economic factor, inclusive of the mode of production, is not — and methodologically cannot be considered — the sole source or underlying cause of criminality.

It was further observed that economic conditions do not develop apart from, but on the contrary, that they form part of the social organization, and by participating in its evolutive motion, they acquire new properties which, in conjunction with other unfavorable psycho-social ingredients, tend to facilitate the genesis of crime.

It now becomes necessary to examine the effect upon society of various powerful factors, such as religion, family and education, in order to determine their proper place in and the extent of their influence upon the phenomenon of criminality.

It is the manifest tendency of social evolution to increase the number of constituent elements which go to make up the life of human societies. Things which hitherto had no bearing upon the daily habits of civilized communities; ideas hitherto alien to the public mind; the revolution in the means of communica-

tion; astounding discoveries in every department of natural sciences — all this, combined, has greatly complicated the methods of social engineering, and in some respects radically changed the broad aspects of our social being. At the same time, some factors which, throughout the earlier stages of history, constituted the fundamental principle of state life, in our day seem to have lost their momentous significance, playing but a secondary role in the cultural aspirations of modern mankind.

Religion, perhaps more than any other element of social integration, has been attacked by different forces of social disintegration. Partly owing to these efforts and, in a degree, as a result of its inner demoralization, the socionomic influence of this factor is steadily becoming less noticeable.

The question may be asked, why should criminology take any interest whatsoever in a matter which is either considered a private affair, or else is purported to belong to theology, theodicy, homiletics and other departments of moral philosophy, with which the layman usually associates the conception of "D.D." — Especially modernistic thought appears to be anxious to dissociate religion from science, believing that their very coëxistence is a *contradictio in se.*

Nevertheless, sociology dealing with the laws governing the life of human societies, cannot disregard an element which, for centuries and ages, has been exercising a strong pressure upon both individual consciousness and the collective psychology of organized communities. Equally, criminology — as one of the branches of sociology — would not be justified in eliminating the religious subject for the mere sake of "progressiveness." On several occasions reference has already been made to the term "moral self-defense," and it has been remarked that the destruction of this barrier is requisite to the full development of the egocentric or criminogenic tendency.

It is proper, then, to examine here those factors which tend to consolidate the ethical principle and constitute a *conditio sine qua non* of any public order. And if it be found that religion *does* contribute towards moral stability, — the deduction should be drawn that the disintegration of this element has a direct

bearing upon the aetiology of immoral conduct, and more specificially, the genesis of crime.

Benjamin Kidd whose penetrating inquiry into the sociologic function of religious beliefs is winning ever-increasing appreciation on the part of the men of science, gives this definition of religion:

"A religion is a form of belief, providing an ultra-rational sanction for that large class of conduct in the individual where his interests and the interests of the social organism are antagonistic, and by which the former are rendered subordinate to the latter in the general interests of the evolution which the race is undergoing." [1]

Religion, and ethics in general, are not merely subjective concepts, since they do more than determine the attitude of the individual towards the Deity. Regardless of dogmatic distinctions, religion endeavors to devise a clearly defined *modus vivendi* for the social group as a whole, and tends to harmonize the conflicting interests within that group. In this way, the natural condition of social friction is being modified by the lubricating effect of the moral impulses set in motion and finding their outward expression in the religious practice.

Such being the social function of religion, it seems impossible to gain a clear understanding of the phenomenon of criminality in its present-day aggressive aspect and menacing growth, without taking into account:

1. the part played by religion in the communities of olden times;
2. the social significance of Christianity;
3. the contemporaneous endeavors to destroy religion, and
4. the psycho-social consequences of its disintegration.

71. Religion in Ancient Rome. The immediate influence of religion upon the daily life of ancient Rome is well known. On this subject, Fustel de Coulanges eloquently stated:

"If we transport ourselves in thought to those ancient generations of men, we find in each house an altar, and around this altar the family assembled. The family meets every morning to address its

[1] Benjamin Kidd, "Social Evolution," p. 111, New York, 1920.

first prayers to the sacred fire, and in the evening to invoke it for a last time. In the course of the day the members are once more assembled near the fire for the meal, of which they partake piously after prayer and libation. In all these religious acts, hymns, which their fathers have handed down, are sung in common by the family. Outside the house, near at hand, in a neighboring field, there is a tomb — the second home of this family. There several generations of ancestors repose together; death has not separated them. They remain grouped in this second existence, and continue to form an indissoluble family." [2]

Religion, thus, was a family practice, the *Pater Familias* performing the function of the priest within a closely united group, whose members were tied to each other through blood relationship. From one generation to another the religious tradition was transmitted intact, its precepts and rites penetrating all the pores and fibres of ancient society.

The political structure of the antique states itself was largely determined by religion.

It will be recalled that in the *Pontifex Maximus* the supreme judicial power was vested, and accordingly, he was regarded as "the judge and arbiter in divine and human things alike" (*"judex atque arbiter rerum divinarum humanurumque"*), so that all governmental officials, not excluding the King, in principle at least, were subordinate to his authority.[3]

On the other hand, the conception of crime was equivalent to that of sin, and *vice versa*. Everything which violated the principles of religious tradition, was both crime and sin, while the customary punishment for public offenses was the interdiction to continue the practice of worship conferred upon the delinquent.[4]

[2] Fustel de Coulanges, "The Ancient City," p. 49, Boston, 1901.

[3] On this subject consult Professor Rudolph Sohm's Textbook of the History and System of Roman Private Law, "The Institutes," p. 56, Oxford, 1907, Third Edition.

[4] What Moses handed to the Hebrews in the form of the Ten Commandments was, in fact, a penal code, every provision of which was a moral law, whose transgression, *eo ipso*, became a crime. Still more pronounced is this interrelation of crime and sin in the ethical pillar of Judaism — the Talmud. Its various tracts, the Erubhin, Shekalim, Pesachim, Yuma and, more particularly, the Sabbath Tract, as M. Rodkinson stated in his English version of the

When, at a later stage of Roman history, under the reign of Marcus Aurelius, Roman civilization, clasped by mortal fatigue, has been going through the agony of general disintegration, the heathen gods and godesses lonesomely dying on the marble altars of their abandoned temples, — a new era took birth during which the potent religious emotion found its expression in the dogmas of Christianity and the moral discipline of the Orthodox Church.

72. The Dawn of Christianity and the Middle Ages. Despite the great confusion of ideas which then prevailed (II and III centuries A.D.) in the countries of the Orient, also notwithstanding the growth of the sectarian movement within the Christian Church itself, neither Gnosticism, as propagated by the schools of Ptolemy, Valentin and Saturnin, nor the mystic teachings of Syrian, Egyptian and Babylonian origin, endeavored to diminish the part of faith in the moral constitution of society. Quite the reverse: the strange syncretism in the domain of religion, which amassed an elaborate exegetic literature, helped to accelerate the crystallization of the Christian ideal and ultimately led to the consolidation of the ecclesiastical authority of the Church.[5]

Throughout the Middle Ages, religion continued to exercise an all-embracing influence, both upon society and the state. The fact that the German Emperor Henry IV was compelled to wait barefoot, three days, at the gates of Canossa, seeking to obtain forgiveness of the Pope Gregory VII — is more than a casual historical episode, being rather a symbol of the submission of the laical government to the spiritual authority of

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Babylonian Talmud (Vol. I, p. XXI, Boston, 1918), "are entirely devoted to precepts pertaining to the observance of the festivals and Sabbath, such as the performance of the different ritual ceremonies on feast-days, the manner of sanctifying the Sabbath, and the ordinances relating to mourning for the dead both on Sabbath and week-days." Thus, the Talmud is the fundamental source of Jewish religious thought. At the same time, however, a large portion of the Talmud deals with both the general principles of jurisprudence and criminal law as well as criminal procedure. (For example, compare Tract Sanhedrin, *Op. Cit.*, Vol. VIII, p. 156).

[5] On this subject we refer the student to Ernest Renan's brilliant studies, "*L'Église Chrétienne*" (pp. 440 and 520), and "*Marc Aurèle et la Fin du Monde Antique.*" Chapters VII and VIII of the latter volume (pp. 113–147) give an exhaustive account of Gnosticism in its relation to the Christian idea.

the Church. This condition was only modified but not abolished by the Reformation.

In short, from the very dawn of history, all through the heathen period, the Middle Ages, and up to the latter part of the eighteenth century, social evolution has been permeated by and essentially dependent upon the element of religion.

73. **Socionomic Significance of Christianity.** Now, whatever may be the criticism of the Christian Church as an ecclesiastic institution, whatever mistakes may have been made by its dignitaries and recognized leaders, — the fundamental fact cannot be denied that the moral philosophy of Christianity is a direct antithesis of those principles which constitute the sinister ideology of criminality. The table below demonstrates the polarity of the two trends of thought.

CRIMINALITY	*CHRISTIANITY*
1. *Egoism*	*Altruism* "Thou shalt love thy neighbour as thyself." Mark, XII, 31.
2. *Vanity*	*Modesty* ". . . for every one that exalteth himself shall be abased; and he that humbleth himself shall be exalted." Luke, XVIII, 14.
3. *Cruelty*	*Mercy* "Blessed are the merciful: for they shall obtain mercy." Matthew, V, 7.
4. *Vengeance*	*Forgiveness* "but whosoever shall smite thee on thy right cheek, turn to him the other also." Matthew, V, 39. "But I say unto you, Love your enemies, bless them that curse you, do good to them that hate you, and pray for

CRIMINALITY	*CHRISTIANITY*
	them which despitefully use you, and persecute you." Matthew, V, 44.
5. *Greed*	*Disregard of Material Wealth:* "And again I say unto you, It is easier for a camel to go through the eye of a needle, than for a rich man to enter into the Kingdom of God." Matthew, XIX, 24. "For what is a man profited, if he shall gain the whole world, and lose his own soul?" Matthew, XVI, 26.
6. *Sexual License*	*Chastity* "Whosoever putteth away his wife, and marrieth another, committeth adultery: and whosoever marrieth her that is put away from her husband, committeth adultery." Luke, XVI, 18.
7. *Defiance of Social Order*	*Obedience to Law* "Render to Caeser the things that are Caesar's, and to God the things that are God's. Mark, XII, 17.
8. *Malice*	*Malice Condemned* "For from within, out of the heart of men, proceed evil thoughts, adulteries, fornications, murders, thefts, covetousness, wickedness, deceit, lasciviousness, and evil eye, blasphemy, pride, foolishness: All these evil things come from within, and defile the man." Mark, VII, 21–24.

Here, then, we perceive the eternal strife between the two worlds — the evil and the just, — the former symbolizing social disintegration, and the latter — social integration.

It is the province of religion in general and Christian faith in particular, to devise for the individual a system of ethics comprising three separate fields of moral conduct:

a. The duties of the individual towards the Deity.
b. The duties of the individual towards society.
c. The duties of the individual towards himself.

But each of these groups incarnates the rigid principle of *duty*, and, therefore, inevitably brings to the foreground the idea of self-restraint which, in turn, is the main counterbalance to the gamut of egoistic impulses.

So long as the factor of Christianity performs this function, it must be recognized as a socionomic power arresting the growth of criminal propensities.

Theoreticians and those unfamiliar with the actualities of the criminal world will probably be inclined to doubt the truth of these remarks. But men with practical experience, who are in daily contact with the manifold manifestations of delinquency, certainly realize the vital meaning of religion in the system of our ethical springs of action. Thus Justice Pierce Butler, addressing in June 1926 the Eucharistic Congress at Chicago, was quoted by the press as having said:

"When truths of religion constitute an integral part of one's fundamental education, when they are embedded in and form part of character the important decisions of life are sure to be guided by them. They enrich and ennoble the minds of the learned and strengthen all in the performances of duty; give calmness, and sweet consolation in times of sorrow, stress or peril. They shed benign light in every relation of life; give assurance of purpose to do justice and of permanent fidelity to country; *constitute the most powerful restraint against evil, and contribute to all things that give peace of mind.*"

Consequently, not only does religion enter into the structure of society as one of its dominant elements, but within the social order itself it brings about three positive conditions:

a. It counteracts the egocentric instincts rooted in man, by awakening in the individual moral impulses of an altruistic nature,

b. It diminishes and neutralizes social friction, and

c. It strives to convey a Divine sanction to the fundamental sociologic factor of the family, thus aiming at its consolidation and guarding it against decomposition.

74. Religion and Rationalism. Modern thought, to a great extent, is permeated with the dogma of utilitarian rationalism. Only the *terre à terre* things are proclaimed to be worth while laboring for, while everything that is either ultra-rational or incapable of being expressed in terms of market price is, *a priori,* considered a reactionary fallacy contradicting the present-day scientific standards.

Accordingly, religion too, is being translated into agnostic formulas of disbelief. In our day, Huxley, August Comte, Ingersoll and Darwin probably occupy in the minds of the "progressive" ministers a more prominent place than the teachings of Jesus Christ himself.[6] The pulpit is rapidly losing its dignity, the churches having thrown their doors open to psychologists, theosophists, political orators, occultists, social workers, exhibitionists of rythmical motion and teachers of choregraphy.

Ministers of the latest formations candidly admit having all sorts of suspicions regarding the truth of the creed which, they, as members of the clerical profession, are in duty bound to propagate among their parishioners; and thus they begin to plan various schemes of "religious reconstruction," overlooking the fact that religious dogmas may only be repudiated and can never be amended.

Young clergymen of the rationalistic school deem it their right to plant seeds of doubt where they happen to behold a trunk of faith, although they should be the first to remember that men have often found consolation in religious faith and rarely in religious doubts.

[6] It is hoped that these remarks will not be misconstrued: When referring to Darwin and the other modern thinkers, no attempt is made to belittle the significance of their scientific writings. The only point which is brought out here is the disintegration of religion.

In order to keep pace with the utilitarian tendencies of our epoch and merely following the road of least resistance, some of these church leaders seek to force the mystical conceptions of religion into the Procrustean bed of materialistic rationalism. But the broad way is not always the right way: the attempt itself, to reduce the transcendental dictates of religion to an empirical proposition, is a *contradictio in se,* and while it adds nothing to the weight of science, it obviously weakens the prestige of religion.

In the majestic edifice of the universal Christian Church the attentive observer will notice may a treacherous crevice, threatening the very integrity of the religious idea.

Every Christian denomination has its own " modernists " and " fundamentalists " quarrelling over those things which are beyond reason and which, therefore, can neither be measured nor weighed. The controversy, however, is not confined to the narrow circle of professional ecclesiastics, but in a most harmful manner reacts upon the entire community, undermining the trust placed by the average layman in the ultra-rational power of the Supreme Being, and thus creating a state of confusion in the minds of those who intuitively grasp that the domain of religion is governed by some high law which cannot be comprehended and should not be disturbed.

The self-conceited and, consequently, half-educated person may rest content with the false presumption that reason *in se* is sufficient to explain everything, and adequately guide us through the busy traffic of life. But the mature mind never forgets Shakespeare's immortal phrase

" There are more things in heaven and earth, Horatio, than are dreamt of in your philosophy."

This is probably why Pasteur, one of the greatest scientists of the nineteenth century, addressing the *Académie Française,* said:

" The idea of God is but a modality of the eternal. I studied much, and, therefore, I believe like a Brittany peasant. Were I to become more learned, my faith would grow as profound and fervent as that of a simple Brittany woman."

Viewing the religious problem through the spectacles of scholastic rationalism, or examining it under the microscope of empirical positivism, it might seem that there is an irreconcilable contradiction between religion and science, the latter, through the advancement of knowledge, gradually reducing the sphere of the former, to such a point as to make it quite useless and its continued existence unjustifiable.

This conception, however, is altogether erroneous, expressing one of the fundamental fallacies of the modernistic agnosticism which fails to comprehend that science deals with the humanly knowable; this region, while it may appear boundless, necessarily has a limit in the very nature of things. The realm of religion is outside the domain of the humanly knowable, thus reigning over the vast fields which are not only unexplored by *unexplorable*. Professor C. Keyser calls it "*the uncharted region of human experience.*" Speaking of the interrelation of religion and science, he states:

"The infinite realm of the uncharted is to shrink as knowledge grows. Present knowledge is finite. Its rate of growth is finite and will remain so. It follows that after the lapse of any finite length of time, however long, the amount of then accumulated knowledge, though it may be immense, yet will be finite. How much of the uncharted will remain? The answer is, An amount precisely as great as before, just as if, beginning with the number one, we suppose wiped out from the endless series of cardinal numbers any succession of integers, however finitely long, the multitude remaining will be exactly as numerous as before, for the first one not wiped out may be marked 1, the second 2, and so on forever. If from a finite magnitude, a finite magnitude be taken, the original is diminished. But to diminish an infinite magnitude, it is always necessary, though not always sufficient, to take away an infinite amount. So vast is the universe of the unknown, that knowledge may grow for any finite time at any finite rate without diminishing human ignorance one whit. That statement is indeed paradoxical, but it is nevertheless scientifically, even mathematically sound." [7]

75. Complete Decay of Religious Ideals. But so great is the temptation to win the applause of the liberal camp, that

[7] Cassius J. Keyser, Ph.D., "Science and Religion." The Rational and the Superrational. Address delivered May 4, 1914, before the Phi Beta Kappa Alumni. Pp. 33–34, New Haven.

many ministers deliberately disregard these fundamental truths. They find it profitable to have religion serve as a mere decorum of the utilitarian machine set in motion by mechanical civilization. And thus, an atmosphere of commercialism and rationalistic emptiness begins to permeate the official church, religion no longer being an irresistible passion, but a mere profession.

Modern churches are being administered virtually on the same footing as large corporations, with their bookkeeping departments, secretarial staffs, publicity managers and other routine devices designed to accumulate material wealth. In this way, the ecclesiastical organization is rapidly assuming the form of a commercial undertaking promoting its business under the firm and style of " The Christian Church, Inc." This, together with the attempts to adapt religious dictates to chemical formulas and rationalistic syllogisms, actually constitutes the disintegration of religion from within, signifying the penetration of materialism into the realm of spiritualism itself.

From this condition there is but one step to the complete decay of the religious ideal which resolves itself into militant socialism. The " new religion " is indifferent to individual consciousness. Instead, it noses into " child-labor " amendments, " maternity-bills," and similar socialistic projects.

Ministers of the new school preach from their pulpits political ideas and advocate economic schemes which have nothing in common with religion and faith. It is their belief that the church is a *class institution* which is being used and abused by the ruling classes for the object of perpetuating the condition of poverty. Rev. John Haynes Holmes, in his volume " The Revolutionary Function of the Modern Church," puts this thesis as follows:

" Say what we will, the church today, in all too many cases, is a class institution; and the men and women who are responsible for the industrial evils which are besetting our country at this time, and are profiting by these evils, are more often than not the very ones who compose that class which is inside and not outside the organization." [8]

[8] *Op. Cit.*, p. 218, New York, 1912.

Thus, the " new church " is urged to combine religious dissension with social unrest, conveying Divine sanction to the latter, so as to undermine and destroy the economic foundations of modern society. On the banner of the reconstructed or modernized " church " we see this motto of Woodrow Wilson inscribed:

" The church in its teaching must contribute to the solution of our bewildered social conditions. It is the duty of the church to supply what society is most eagerly looking for — *standards of revolution!* " [9]

This — we maintain — actually constitutes the complete decay of religion.

76. Religion in Soviet Russia and Mexico. The disintegration of religion is not only an inner process arising from the triumph of the doctrines of agnostic materialism. In some countries, this condition is largely caused by government intervention and the conspicuously hostile attitude towards religion, adopted by the state.

In Soviet Russia, for instance, religious persecution is the official policy of the Communist Party which openly urges the destruction of faith on the alleged ground that *" Religion is the opium of the people."*

Rev. Courtier-Forster, formerly Chaplain at Odessa, thus describes the methods of " direct action " applied in that country:

" It was the martyrdom of the two Metropolitans and the assassination of so many Bishops and the killing of hundreds of various Christian ministers of religion, regardless of denomination or school of thought, that proved the undoing of the Scourge. Russian Orthodox clergy, Protestant Lutheran pastors, Roman Catholic Priests, were tortured and done to death with the same lighthearted indiscrimination in the name of toleration and Freedom. Then it was that the Scourge, seeing the last remnants of Liberty ground under the heel of a tyranny more brutal in its methods than a mediaeval torture chamber, published another full-page cartoon representing Moses descending from the Burning Mount, bringing in his arms the Tables

[9] *Op. Cit.*, p. 216.

of Ten Commandments to Humanity, and being stoned to death by a mob of workmens' and soldiers' delegates." [10]

Quite in harmony with these tactics, section 12 of the Soviet Decree on the Separation of the Church from the State, provides that no church or religious associations shall have the right to own property, while on the strength of section 13 of the same enactment,

" All properties of the existing church and religious societies in Russia are declared national properties. Buildings and articles specifically designated for religious services may, by special decisions of the local and central State authorities, be given for the free use of the respective religious bodies."

Furthermore, the " workers' and peasants' government " is doing everything in its power to debase in the minds of the people the social status of the clergy. So, according to section 65 of the Constitution of the Russian Socialist Federal Soviet Republic, ministers of all denominations as well as mentally deficient persons, are deprived of the right to vote or to be voted for. The Soviet State is expending very considerable sums of money for official anti-religious propaganda, while the fundamental law of the Republic prohibits any kind of religious teaching in public schools and all other educational institutions.

No wonder, then, that Tikhon, the late Patriarch of Russia, publicly denounced the red rulers and emphasized the criminal character of their dogmas. His words are worth quoting:

" It is not enough that you have stained the hands of the Russian people with the blood of their brethren. You have instigated the people to open, shameless robbery. You have befogged their consciences and stifled their conviction of sin; but under whatever name you may disguise an evil deed, murder, violence and robbery will always remain crimes and deeds of evil that clamor to Heaven for vengeance. Yea, we are living through a dreadful time under your domination, and it will be long before it fades from the hearts of the nation, where it has dimmed the image of God and impressed that of the beast." [11]

[10] See Rev. R. Courtier-Forster, reprint from the London *Times*, December 3, 1919, p. 4.

[11] See Boris Brasol's " The Balance Sheet of Sovietism," p. 208, New York,

Likewise, in Mexico, the Calles Government, in 1926, undertook the expulsion of Roman Catholic priests, not Mexicans by birth, while ministers of all denominations were barred from carrying on religious propaganda or criticizing the Constitution of Mexico. All studies made in colleges destined for religious pursuits have been declared void. The celebration of any religious event, outside the churches themselves, was placed in the category of criminal offenses, the Secretary of the Interior having been given authority to close any church which had failed to conform to the new regulations.

The reaction of the people to these punitive statutes was similar to that in Russia: bloody revolutionary outbreaks took place in various sections of Mexico, the government using armed force in its endeavor to dim in the hearts of its citizens "the image of God."

In this way reverend preachers of rationalism and avowed executioners are working hand to hand for the achievement of one and the same aim, that is the elimination of religion from the field of socionomic phenomena.[12]

77. Ideational Contents of Morality and the Ultra-Rational Sanction. The political consequences of the destruction of religion are of no interest to criminology. But the general sociologic effect of this phenomenon, and more particularly its criminogenic nature, must be taken into account by those studying the problem of criminality in its psycho-social aspect.

Individual behavior is by no means exclusively determined by the factor of formal reasoning. We find the human animal in his under-developed state, guided by many heterogeneous factors, such as instincts, fundamental desires, temperamental

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1922. There is no need for enlarging here upon this subject. The following books may be suggested in the way of additional reading matter: Bishop Richard J. Cooke, "Religion in Russia under the Soviets," Capt. Francis McCullough, "The Persecution of Christianity in Russia," Boris Brasol's *Op. Cit.*, and A. A. Valentinov, "The Assault of Heaven." See also the monthly magazine "*Bezbojnik*" ("*The Godless*"), published in Moscow for the purpose of fostering atheism.

12 See Article, "Mexico Puts 'Teeth' into Religious Law," *New York Times*, June 8, 1926. Similar laws were passed in France in 1905 when the Combes Cabinet introduced the bill abrogating the Concordat concluded between the Vatican and Napoleon in 1801 and effecting the separation of the Church and the State.

disposition and crystallized habits. But, with mental growth, other factors begin to intervene, converting zoölogic "behaviorism" into sociologic conduct. In this process of psychic development and perfection, religious beliefs and moral concepts play an important role. It will be shown in a later part of our study that they mould *character* which, in turn, determines the fundamental attitude of the individual towards the social order.

The system of moral self-defense is the antidote to the egocentric propensity and in this capacity, it counteracts the different criminogenic influences from without. But individual morality itself derives its origin from three different sources:

a. Social environment, (family, education, etc.)
b. Rational convictions, (analytical digest of the experiences furnished by group *a*,) and
c. Ultra-rational beliefs.

The third source (*c*) consists of religious ideas and intuitive notions which distinguish the *ethical* principle from *legal* concepts. In fact, as it has been observed by Professor Petrajitzky,[13] morality establishes an *one-sided* obligation (duty), confined to and conceived by the individual himself, whereas, virtually every juridicial norm produces a two-fold relationship in which the *obligation* of one party corresponds to the *right* of the other party. This notion of law was expressed by Ulpian in his classical maxim: "*Juris praecepta sunt haec: honeste vivere, alterum non laedere, suum cuique tribuere.*"

However, in order that an one-sided obligation may become a factor actually impelling the individual to act in a specific manner, it must have some kind of *sanction* whose psychic authority should stand *above* the rules and laws of formal logic, and thus possess an ultra-rational nature. Psychologically, this is due to the following condition: environmental data passing through the prism of consciousness, are subjected by the mind to analytical examination, and, finally, acquire the form of a rational conviction. Nevertheless, the integrative process, being dependent upon the changing modes of environment, the mental conviction itself, if it be devoid of the ultra-

[13] Professor L. Petrajitzky, "Theory of Law," Vol. I, St. Petersburg, 1906.

rational sanction, — easily may be superseded by some new conception, rejecting the binding character of the duty originally conceived. If, however, the moral obligation, besides its formal and changeable ideational content, is strengthened by the firmly established ultra-rational agency, it then — but only then — assumes the nature of a *categorical* imperative and becomes the determining factor in human conduct. Such an ultra-rational sanction individual morality finds in religion [14] or intuition.

In this way, the destruction of religion and the systematic ridiculing of the principles of ultra-rationalism, practiced in public life, are of profound concern to criminology.

78. Destruction of Religion and its Effect upon the Juvenile Mind. It is easy enough to bring up a child in an atmosphere of religious neglect, teaching him that only the measurable and tangible things are of import to him; that there is nothing, besides, outside or above the 2×2 proposition; and that reason alone suffices to guard him against the temptations of life. But this narrow and formal interpretation of human psychology carries with it dangerous germs of social disintegration, inoculating into the juvenile mind deadly bacteria of soulless materialism, making it selfish and egocentric. The

[14] Referring to the place of religious sentiment in the general range of ethical "springs of action" it may be interesting to recall that Dr. James Martineau, in his work "Types of Ethical Theory" (vol. II, p. 266, Oxford and New York, 1886), presents the series of emotions in the ascending order of growth as follows:

1. Secondary Passions; — Censoriousness, Vindictiveness, Suspiciousness.
2. Secondary Organic Propensions; — Love of Ease and Sensual Pleasure.
3. Primary Organic Propensions; — Appetites.
4. Primary Animal Propension; — Spontaneous Activity (unselective).
5. Love of Gain (reflective derivative from Appetite).
6. Secondary Affections (sentimental indulgence of sympathetic feelings).
7. Primary Passions; — Antipathy, Fear, Resentment.
8. Causal Energy; — Love of Power, or Ambition; Love of Liberty.
9. Secondary Sentiments; — Love of Culture.
10. Primary Sentiments of Wonder and Admiration.
11. Primary Affections, Parental and Social; — with (approximately) Generosity and Gratitude.
12. Primary Affection of Compassion.
13. Primary Sentiment of Reverence.

Thus, it will be noticed that the sentiment of reverence which is requisite to the religious emotion occupies the highest place in the ascending series.

disintegration or neglect of the religious ideal deprives youth of that element which alone is capable of conveying stability to its moral convictions. The danger is all the more great as during the "*Sturm und Drang*" period of man's life, there is a natural inclination toward disbelief which is the legitimate condition of mental underdevelopment. As Edwin Starbuck justly pointed out:

"It is not because the great truths which are embodied in dogmas and conventions are wrong that youth cannot understand them, but only that youth holds them at arm's-length in order to look at them and try to understand them. They have no meaning to him, simply because they are *objects* to his consciousness. To be religious facts they must constitute a part of his own nature; they must be worked over into the world of values; they must not only be the things seen, but must be part of the consciousness which sees. . . . The life of the senses must give way, and one must be willing to be an organ for the expression of universal life. 'The kingdom of heaven is within you.' This is the revelation that comes only in its completeness with maturity. . . . Having found the revelation within his own being, the full-grown man or woman sets about, as one of the units of an organized whole, to transform it into life." [15]

Now, if juvenile morality be guided exclusively by the shifting experiences of rational integration, if it be devoid of the religious sanction, — a condition of mental emptiness must develop, while the anti-social conviction that "*everything is permitted*" is liable, sooner or later, to sneak into consciousness, producing there an attitude of despair. This, then, is the origin of the "crimes of rebellion," as Koni aptly called them, which are so often observed among adolescents who, under the influence of incurable materialism, earnestly believe that, by committing atrocious offenses, they "have nothing to lose but their chains," and that "they have a world to win." [16]

[15] Edwin Diller Starbuck, Ph.D., "The Psychology of Religion," p. 292 and 293.

[16] Concluding paragraph of Karl Marx's "Communist Manifesto." Incidentally it might be remarked that many fundamental phenomena with which man is confronted in daily life, such as motion, time, space and duration, can be scientifically conceived and philosophically explained only in the light of *intuitive* knowledge. This is especially true of the more refined manifestations of our mind, like the self-expression of man in art. In this connection Bergson's

B. — Family

79. Family in Modern Society. The family, too, in our day is in a state of demoralization. The everlasting rush and whirl of life, unhealthy craving for new amusements, morbid raving about " social success " and advancement, the craze of money-making, the epidemic of divorces, the utter neglect of religion, the propagation of narrow-minded utilitarian doctrines and the rationalization of educational methods, — all this combined, drives both parents and children out of their homes. These, indeed, are frequently converted into mere over-night resorts, devoid of that unique atmosphere of intimity and the singular charm of privacy, which the home of olden times used to possess.

Contemporary men and women alike, seem to have lost the enviable gift of cherishing the infinite delights of quiet family life with its genuine virtues, lasting joys and inner comfort. Instead, both the upper and the lower strata of society, have devised a method of existence which perhaps might be properly called, " jazzing through life."

These features of modern life are especially noticeable in congested urban districts, and it is in these densely populated regions that criminal instincts develop unhampered, their growth being accelerated by a suffocating condition of unrestricted materialism and selfish longings for morbid excitations. Verily, there seems to be much truth in these stern words of the great English moralist, which were uttered several decades ago.

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statement should be recalled: " An artist of genius has painted a figure on his canvas. We can imitate his picture with many-colored squares of mosaic. And we shall reproduce the curves and shades of the model so much the better as our squares are smaller, more numerous and more varied in tone. But an infinity of elements infinitely small, presenting an infinity of shades, would be necessary to obtain the exact equivalent of the figure that the artist has conceived as a simple thing, which he has wished to transport as a whole to the canvas, and which is the more complete the more it strikes us as *the projection of an indivisible intuition.*" (See, Henri Bergson's " Creative Evolution," pp. 89–90, 17th Ed. New York, 1924. On this subject brilliant thoughts have been expressed by the Russian philosopher Prince Eugene Troubetzkoy, in his latest work, " The Meaning of Life," pp. 11–29, Berlin, 1922 (in Russian).

"So all that great foul city of London there, — rattling, growling, smoking, stinking, — a ghastly heap of fermenting brick work, pouring out poison at every pore, — you fancy it is a city of work? Not a street of it. It is a great city of play; very nasty play, and very hard play, but still play. It is only Lord's cricket ground without the turf: — a huge billiard table without the cloth, and with pockets as deep as the bottomless pit; but mainly a billiard table after all." [17]

This "nasty play," the "*dance macabre*" of our age is not confined to the factories and shops, the busy streets and smoke-coated suburbs. The germs of social disintegration have found their way into the modern homes producing there a state of profound dissatisfaction. Husband and wife are no longer one: each seems to be choosing an independent path of his and her own, — both seeking to reap in the field of life nothing but pleasant adventures for themselves. And so, years go by, and it is a continuous stream, rather a heavy chain of weary amusements, kaleidoscopic changes within the same frames of mind, a monotonous cycle of selfish moods, with no spark of noble passion illuminating the daily labors and daily recreations.

Thus, family life is often turned into an unbearable burden of nothingness, a true inbred vulgarity; and this, to use Ruskin's words, "is a dreadful callousness, which, in extremity, becomes capable of every sort of bestial habit and crime, without fear, without pleasure, without horror, and without pity." [18]

Likewise, the gulf dividing parents and children is steadily growing wider. Indeed, there always has been a certain amount of disharmony between the two generations within the family unit, representing the natural differences between the old and the young, the everlasting process of things simultaneously decaying and flourishing, expressing the eternal principle of death competing with the eternal principle of life.

80. Family of the Past. Friction which thus developed, in days gone by, merely symbolized the condition of organic growth of society without, however, destroying its foundations,

[17] John Ruskin, "The Crown of Wild Olives," Work, p. 30, New York.
[18] John Ruskin, "Sesame and Lilies," pp. 42, 43, New York, 1908.

and above all — leaving intact the the intrinsic element of the social order — *the family.*

In world literature, there are many beautiful pages portraying family conditions as they used to be in the past. It suffices to recall such novels as Tolstoy's "Childhood, Boyhood and Youth" or "War and Peace." In the pictures drawn by this great philosopher and artist, family relationships are unfolded not as the sweet pastorals of Watteau or Fragonard, but displaying the true colors of life itself, its every-day prose — not its incidental poesy. Accordingly, we find home life made up not only of pleasant happenings and mirthful events, but also of disappointments, friction and some times — dramatic disagreements. Still, despite the misunderstandings and discord which now and then disturbed the peaceful existence of these men, women and children, — the family invariably preserved all the properties of a compact body, so that every one of its members, while retaining his or her individual characteristics, constituted an indispensable element of the union itself.

It was natural for those simple and honest families to have evolved honorable traditions whose beneficial influence penetrated beyond the domestic circle into the tissues of the nation as a whole, creating a widespread feeling of safety and happiness.

In those days, the calm flow of life made it possible for the people to build, even though slowly, but solidly, weighing their doings, measuring their emotions, sounding their thoughts, and thus, avoiding haste in their conduct and waste of their creative energies. Unwholesome excitement permeating contemporary society was utterly alien to the men whose heritage we are now recklessly squandering.

Principally, however, the family performed the function of the major stabilizing factor, both with regard to the individual and the social order in general. It was the place of birth and growth of all moral ideas, the great school of good manners, a conception which ought not to be confused with snobbish mannerism of those who wish to appear, but indeed are not, gentlemen.[19]

[19] It might be interesting to recall what Vladimir Solovieff, one of Russia's foremost philosophers, said about good manners and courtesy: "There is in

81. **Sociologic Notion of the Family.** Modern science recognizes the immense socionomic importance of the family and the criminogenic significance of its dissolution. Notwithstanding all technical discoveries and the various progressive projects set forth for social betterment, the human brain, so far, has failed to discover any adequate substitute of the decaying family.

Professor Alvin Good, analyzing the part played by the average family in the educational processes building up the individual, correctly observes that it is *the most important* source of all vital incentives; this, not only on account of the fact that every person spends much of his time in the family, but equally because there are certain stimuli, the responses to which can be easier and quicker obtained through the family than through any other social instrumentality. This author states:

"The love that children have for their parents and for one another, and the parents for the children, is a strong emotion and undoubtedly influences enormously the responses made to the stimuli in the family group. It is not necesary to show here that this influence is for the better or the worse, as it is educative in any case; *but it is interesting to note that the nature of this emotion influences to altruistic acts even to the point of great sacrifice.*" [20]

The fact itself that the family does generate altruistic emotions is of momentous significance from the standpoint of criminology. We know that the egocentric tendency, in its extreme development, is the underlying psychic factor of crime. Therefore, it is clear that every influence tending to diminish the selfish motive in the conduct of the individual must be a

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culture another phase, which is practical or moral, if you please, a thing which in private life we call courtesy or civility. From a superficial standpoint this might be considered unimportant; nevertheless it has an enormous and unique significance precisely because it is the only thing that can become general and obligatory. Indeed, it is impossible to expect from any one, be it supreme virtue, or a highly developed intellect and genius. But we can very well hope everybody to be polite. This is that *minimum* of common sense and morality which makes it possible for human beings to live in a human way." ("Three Conversations," p. 73, Munich, author's translation from the Russian, italics ours.)

[20] Professor Alvin Good, "Sociology and Education," p. 87, New York and London, 1926. Italics ours.

beneficial socionomic agent which weakens, neutralizes or eliminates altogether the criminogenic propensity.

It is also in the bosom of the family that the fundamentals of morality and general virtues are being, or should be, inculcated into the minds of the young. Hitherto, this part of domestic education was closely affiliated with religious instruction. Again, on this subject Professor Good says:

"... The family that consciously and sensibly gives religious training will so fix religious beliefs in the habits and the mind of the children that a lifetime of attack and of attempts to modify will have little effect except to develop a broader and more reasonable religious belief that ordinarily develops with higher intellectual training. Simple religious practices of Bible reading and prayer that become a sacred and intimate part of family life, especially if the acts of the parents in every walk of life harmonize with the religious training, have such a strong influence upon the child, who develops these attitudes for the most part before school age, that little in life can exert sufficient influence to make him stray far from the fundamental faith of his parents, though the interpretation of the symbols and practices may change as each child comes into other environment." [21]

For this reason the church has always sought to uphold the principle of the family conveying a Divine Sanction to its existence. Some Christian denominations, like the Greek Orthodox and Roman Catholic, condemn the very idea of divorce on purely dogmatic grounds, basing their interdiction upon the words of Jesus Christ himself:

"Whosoever putteth away his wife, and marrieth another, committeth adultery: and whosoever marrieth her that is put away from her husband committeth adultery." (Luke, XVI, 18.)

82. **Criminality and the Disintegration of the Family.** It is a misfortune of our age that little is being done for the consolidation of the family, whereas, mighty forces seem to be conspiring against it, seeking to divorce the children from their parents and society — from the family.

When nowadays, the origin of criminality is being publicly studied and discussed, even serious thinkers frequently befog the complex issues of the problem by juggling with such symp-

[21] *Op. Cit.*, pp. 103–104.

toms as the price of wheat or potatoes, the cephalic measurements, the mode of production and the shape of the ears. All these and similar casual things, having but a remote relation to the phenomenon of crime, are being prominently brought to the attention of the public, instead of emphasizing the truth and demonstrating the basic fact that the appalling growth of delinquency is, in a large measure, the result of the dismemberment of the family and the vanishing of religion from the field of social phenomena.

The moral influence of the family upon the juvenile portion of the population is losing ground nearly in every country. Modern pseudo-scientific doctrines, mostly deriving their origin from the principles of economic materialism, entertain the idea that the family is an atavistic and rather reactionary institution, something like the House of Lords in England, which should be thus confronted with the radical dilemma "mend it or end it."

83. **Endeavors to Destroy the Family from Without.** For decades the abolition of the family has been ardently advocated by socialist writers and has now become a practical policy in Soviet Russia. Friedrich Engels, one of the founders of the communistic theory, in his well known book, "The Origin of the Family," thus formulated his views:

"With the transformation of the means of production into collective property the monogamous family ceases to be the economic unit of society. The private household changes to a social industry. The care and education of children becomes a public matter. Society cares equally well for all children, legal or illegal. This removes the fear about the 'consequences' which now forms the essential social factor — moral and economic — hindering a girl to surrender unconditionally to the beloved man. Will not this be sufficient cause for a gradual rise of a more unconventional intercourse of the sexes and a more lenient public opinion regarding virgin honor and female shame?" [22]

And further:

"If marriage founded on love is alone moral, then it follows that marriage is moral only as long as love lasts. The duration of an

[22] Friedrich Engels, "The Origin of the Family," pp. 91 and 92, Chicago, 1918.

attack of individual sex love varies considerably according to individual disposition, especially in men. A positive cessation of fondness or its replacement by a new passionate love makes a separation a blessing for both parties and for society. But humanity will be spared the useless wading through the mire of a divorce court." [23]

The same ideas are propagated by Ernest Belford Bax, a prominent English socialist, in his volume, "Religion of Socialism":

"We defy any human being to point to a single reality, good or bad, in the composition of the family. It has the merits of being the most perfectly preserved specimen of the complete sham that history has preserved to the world."

And then, in the way of a most convincing argument this same author states:

"Supposing that in Russia or elsewhere a sudden and urgent demand for material resources for party purposes arose, and that much hung on its being immediately satisfied. Suppose, again, that as a last resort a female member of the party were, without any hypocritical pretense, to sell her body to raise the money. Would not this be a commendable act? Given the elimination of the mystical theory of the sexual relation, I would say, 'Yes.' Prostitution for private gain is morally repellent. But the same outward act done for a cause transcending individual interest loses its character of prostitution and acquires a new content." [24]

Quite in accordance with these utterances, the Second Congress of the Third International, held in Moscow in 1920, outlined the following program:

"Endeavors must be made to induce the house-wife of the traditional family (the most backward, ugly and undeveloped form of economic mediaevalism) to adopt collectivism, thus converting her from a serf into a free worker in a large communal household. Endeavors must be made to establish model communal institutions which shall take charge of the domestic problems which hitherto have been the

[23] *Ibidem,* pp. 99 and 100.

[24] Quoted in Samuel Saloman, "The Red War on the Family," pp. 37 and 39, Washington, 1922.

task of the women belonging to the former bourgeois families, and which in every way shall facilitate their maternal duties. It is necessary to explain to the women that the individual household in its original form bears a backward character and causes superfluous waste of time, labor and money; that capitalism uses individual households as a means of maintaining for the husband a low level of wages, relying upon the free house-work of his wife and in order to keep his wife in a state of mental and political backwardness, excluding her from social life." [25]

84. Soviet Divorce Law and its Practical Effect. On the other hand, the Divorce Law in Soviet Russia has been so shaped as to assure the disintegration of the family.

Section I. of this Law reads:

"Marriage is annulled by petition of both parties *or even one of them,*"

whereas, Section VI of the same Statute contains the following provision:

"Having convinced himself that the petition for the annulment of the marriage really comes from both parties, *or from one of them,* the judge *personally and singly* renders the decision of the annulment of the marriage and issues a certificate thereof to the parties."

These legislative measures produced the following practical effect. In Moscow, during the year 1918, divorces were granted as follows:

January	98	July	611
February	384	August	507
March	384	September	343
April	1053	October	436
May	980	November	384
June	804		

In Petrograd there was one divorce for the following number of marriages:

[25] See *The Communist International,* No. 15, pp. 3464–3467, Petrograd, December 20, 1920. Translation from the Russian.

1920	16
1921	8
1922	6.6

A point to bear in mind is that out of each 100 divorce cases in Petrograd,

51.1% the marriage had lasted less than 1 year,
17.8% the marriage had lasted from 1–2 years,
8.2% the marriage had lasted from 3–4 years,
22.9% the marriage had lasted over 4 years.

It should be added that in the case of the first 51.1% the marriage lasted *less than six months* in 74 cases out of 100.

Bad as this condition may seem, the situation in provincial districts appears to be still more alarming. Thus, in 1922 in the city of Poltava there was one divorce for every 4.9 marriages, while in Nikolaeff there was one divorce to 3.9 marriages.[26]

85. Disintegration of the Family in the United States. It is a fundamental error to think that the dissipation of the family is confined to Soviet Russia alone.

Data from various reports of the U. S. Census Bureau, referred to in the volume "Social Pathology," give the following picture of the steady increase in divorces in this country.

INCREASE IN DIVORCES

Year	*Total Number of divorces*	*Divorces per 100,000 population*	*Divorces per 100 marriages*
1870	10,962	28	3.5
1880	19,663	39	4.8
1890	33,461	53	6.1
1900	55,751	73	8.1
1916	112,036	112	11.0
1922	148,554	136	13.1[27]

[26] Compare these data with "Statistical Materials for Petrograd" No. 5, 1922, p. 27, the article of Goyhbarg, "The Marriage Law," Izvestia, September 12, 1923, and Sorokin, "The Sociology of Revolution," pp. 84–85.

[27] Stuart A. Queen and Delbert M. Mann, "Social Pathology," p. 58, New York, 1925.

On the other hand, the survey of the same Census Bureau, released December 7, 1925, furnishes further information on the subject for the years 1923 and 1924. According to this authoritative source, during the calendar year 1923, there were 1,223,924 marriages in the United States. During the same year 165,096 divorces were granted; in other words, one divorce took place to every 7.04 marriages.

In 1924 the number of marriages, compared with the preceding year, decreased very substantially, namely there were but 1,178,206 marriages reported, constituting a decline of 3.7%. On the contrary, the number of divorces for that year increased to 170,867, meaning that there was one divorce to every 6.8 marriages. The divorces reported for 1924, with four counties lacking, show an increase of 5,771, or 3.5%, over the number registered for 1923.[28]

The Census Bureau deals with the question of the decomposition of the family also in another way: it shows the comparative rates of the married population to the number of divorces granted. In 1916 there were 356 married people to one divorce, as compared with 277 — for the year 1923. The dramatic features of the situation become even more apparent if we go back to 1870, when there was one divorce to a ratio of 1,233 married people. Thus we may draw the following table:

	Percentage of divorced to married population
1870	0.28
1900	0.73
1923	1.49

[28] In some of the States the decay of the family has been assuming astounding proportions. The figures of the U. S. Census Bureau show that the following number of divorces was granted in:

	1923	1924
Pennsylvania	7,542	8,271
Michigan	8,733	9,244
California	9,381	11,258
Ohio	11,902	11,946
Illinois	12,317	13,658
Texas	14,632	15,375

It is obvious, then, that the divorce epidemic is assuming an everincreasing tempo in all the States of the Union and among all the classes of its population. The figures quoted here acquire a singular importance if it is considered that Judicial Statistics for England and Wales demonstrate the fact that during the year 1923 there were only 3213 divorces granted, while in 1924 the number of divorces decreased to 3148. The annual average of divorces for the period 1920–1924 was 3,603. The population of England and Wales being about 40,000,000, it is evident that were that country to keep pace with the number of divorces in the United States, it would have to increase its ratio to 72,060, more or less. This means that the disintegration of American families develops *twenty times quicker* than in England and Wales.[29]

From the standpoint of criminology it is important to note that the number of crimes committed in the United States is approximately twelve to fifteen times larger than that committed in England and Wales. This situation, then, has a far greater bearing upon the aetiology of delinquency than the astronomical differences with respect to the market prices of wheat and potatoes.

86. Criminogenic Results of the Disintegration of the Family in the United States.— However, the disintegration of the family in the United States is not confined to the divorce epidemic. While it is true that separation primarily affects the parents, yet it also inevitably reacts upon the children.

If father and mother do not know how to behave, it is impossible to expect that their children should behave better. If father and mother devote their time to mischief, how can it be hoped that their children will refrain from mischief? If father and mother are moral delinquents, why should it be expected that their children shall adhere to moral principles? — The disintegration among the older members of the family automatically produces disintegration among its junior members. For the family is not a *mechanical* conglomeration of human beings, casually brought together under one roof, but it is, or

[29] County Courts Branch, Lord's High Chancellor's Dept. pp. 2, 3, London, 1925

should be, an *organic* union within the limits of which the disease of one member is bound to affect the whole organism.

Some time ago, "Current Opinion" published an able article, entitled "Lawlessness: The Shame of America," in which the criminogenic effect of the moral neglect of the young is vigorously set forth, while also other factors contributing to the increase of criminality are examined.

In part the article reads:

"... The truth seems to be that crime flourishes in America because of the breakdown of criminal justice and the breakdown of family responsibility. In the words of Secretary Hughes, 'criminal processes are too dilatory, juries are too indulgent, judges are too lenient in sentences. ... We need less of scandal and more of direct, inflexible, swift processes of justice. The counties with the lowest crime records have the best justice.' Our police are notoriously inefficient in apprehending criminals. To remedy this the chief City Magistrate of New York urges that they be given a 'free hand'; The New York *World* recommends that we call them off from 'censoring plays, watching labor unions, issuing statements about Bolshevism, tasting liquor, and inspecting bathing suits, and mobilize them against criminals instead of sinners.'

More fundamental and far more difficult to remedy than the bankruptcy of courts and police is the decay of family responsibility. With the rise of the Public School parents have more and more abdicated their authority over their children, trusting external agencies to bring them up. The schools, with only limited control over the children for a few hours each day, have struggled in vain to do the impossible that is expected of them; and education, especially in its moral and spiritual aspects, has fallen down in consequence between parents who won't do their duty and schools that can't. As a result, the schools ask incessantly for more funds to extend their activities and the parents, their offsprings now beyond control, ask for laws and more laws to save the younger generation from evil doing. This is why the nation most addicted to legislative panaceas finds itself today with a government incapable of performing efficiently its elementary duty to protect life and property." [30]

87. **Colonel Bovill's Report.** That the situation is growing heartbreaking seems to be well corroborated by the report of

[30] *Current Opinion*, July, 1924, pp. 17, 18.

the New York Headquarters of the Salvation Army made public on June 14, 1926.

The survey is of such far-reaching importance that we feel justified in quoting extensively therefrom. The document reads as follows:

"Forty-two per cent of the unmarried mothers cared for during the last 2 years in the 15 Salvation Army Maternity Homes in the Eastern Territory of the United States have been *school girls of high or elementary grades, averaging 16 years of age,* and the great majority of them, according to an exact survey just completed, have attributed their difficulties to automobile flirtations.

These revelations have just been made by Colonel Margaret Bovill, as her last official act on the eve of her retirement as the Territorial Director of Salvation Army Social Service work among women and children. While making these revelations the Colonel has urged her successor in office, Lieutenant-Colonel Clara Van der Schouw, to do everything in her power to warn parents against the perils of promiscuous automobile riding on the part of their daughters.

. . . . . .

'Twenty years ago,' said Colonel Bovill, 'our rescue homes, as they were then called, were always filled with women of mature age who had deliberately degraded themselves. Many of them were found in establishments in the so-called red-light districts and were induced to enter our institutions as the first step toward a new start in life. Others we used to find and plead with in the backrooms of saloons and still others were taken out of the police courts after they had been arrested for soliciting on the streets. From whatever source we found these women, however, they were, with only a few exceptions, women who had deliberately and consciously chosen what has mistakenly been called 'the easiest way.'

This is not the situation today. Red-light districts have been done away with largely and so have the saloons with back rooms, and, between the police and the activities of citizens' committees, we have practically eliminated open prostitution on the streets. In spite of these reforms, the Salvation Army in this one Territory now has twice the number of maternity homes that it operated in those lurid days of the past and they are all filled to capacity — by whom? Not by professional, deliberate and conscious violators of the social code,

although we still work among that class, too — but by school children, many of whom have been obliged to leave their desks in either the high or elementary grades to go direct to our institutions for the ordeal of motherhood.

I, myself, have been amazed during the survey just completed to realize the great percentage of our inmates during the last 2 years who have been *school girls*. I have known for some time that the number was increasing, but not until the completion of this survey did I realize that it had reached the appalling figure of 42% of our entire work in these institutions.

The average age of these girls *is 16 years*. Any intelligent observer will see instantly what this means. To have an average of 16 means that *we must have an astounding number of girls who are becoming mothers between the ages of 11 and 14.*

I have had matrons in all 15 institutions interview very carefully every girl admitted during the last 2 years and in a majority of cases we find that the same cause — automobiles with predatory drivers — was the cause of the difficulty. In hundreds of cases we have found that girls either on the way to school or on the way home from school have been 'picked up' by men in automobiles and induced to 'go out on parties' with disastrous results. This sort of thing forms the bulk of our maternity home work today. In other words, we have relatively few deliberately and consciously bad women in our institutions. Those whom we have now are mostly girls who are good at heart, most of them with good homes, but who, as the result of indifference toward parental control or *any kind of moral or ethical guidance,* have allowed themselves to make a mistake.'

To demonstrate that her assertions as to the situation generally during the last 2 years could be proved at any given moment, Colonel Bovill on Wednesday, June 9th, sent telegrams to the matrons of the 15 homes in the Eastern Territory requesting immediate replies to 3 questions. The telegrams were dispatched to homes located as follows: Philadelphia, Jersey City, Pittsburgh, Buffalo, 2 in Cincinnati, Birmingham, Boston, 2 in Cleveland, Louisville, Ky., Roanoke, Va., Wilmington, N. C., Richmond, Va., and New York City. The answers to the 3 questions, which constitute the survey of conditions in the homes as of that date, were as follows: Number of girls in institutions, 397; number of these who were elementary or high school girls or of school age, 169; and the number of present

inmates who had, in interviews with the matron, attributed their difficulties to automobile flirtations, 137.

The matron of the Jersey City home reported one case, as an example, of a *13-year-old girl* who was to have been graduated from grammar school this month. Intensely interested in her school work, she brought her books with her and asked for permission to devote her evenings to study in order that she would not fall behind her class. She continued her studies as requested until the birth of a baby boy.

One of the other homes reported a grammar school girl of 12 who was about to be a mother.

Colonel Bovill's survey as of June 9th follows:

SURVEY AS OF JUNE 9TH, 1926, OF THE INMATES OF THE 15 SALVATION ARMY MATERNITY HOMES IN THE EASTERN TERRITORY

	Number of girls in the institutions at present	*Number of these who are either school girls or of school age*	*Present inmates attributing their difficulties to auto flirtations*	*Percentage in the last 2 years of school age*
PHILADELPHIA	38	25	20	75%
JERSEY CITY	31	24	20	60%
PITTSBURGH	23	12	12	50%
BUFFALO	45	15	20	40%
CINCINNATI	21	16	14	70%
CINCINNATI (*colored*)	21	17	1	60%
BIRMINGHAM	34	8	20	25%
BOSTON	36	7	6	13%
CLEVELAND	32	5	4	22%
CLEVELAND (*colored*)	20	11	5	60%
LOUISVILLE	18	6	4	20%
ROANOKE	10	5	0	50%
WILMINGTON	27	9	7	35%
NEW YORK CITY	32	6	3	20%
RICHMOND	9	3	1	40%
Totals	397	169	137	Average [31] 42%

[31] Quite in line with Colonel Bovill's survey is the typical bit of information reported in the New York *Times* of June 23, 1926: "Judge Mancuso in General

Here, then, criminology touches upon the *real* — not the imaginary — causes of criminality in its present-day militant aspect. It is not the mode of production, nor poverty, *in se,* nor prosperity, nor the shape of the nose, nor the brachycephalic symptom, nor any other incidental factor, that generates the phenomenon of crime, but those fundamental destructive changes which take place in the composition of society itself, assuming the form of dangerous gangrenous processes and threatening the very existence of social order.

When we begin to conceive that all moral foundations have been gradually destroyed, men, women and children alike, clamoring for nothing but material gain and self-gratification; when we think that people today, like the Roman mobs in the days of the decay of their Empire, are striving for nothing but "*panem et circenses*"; when our families are found in a state of complete dissociation, fathers and mothers having lost all ethical conceptions, and children morally neglected and abandoned by their parents; when we see supposedly civilized nations madly engaged in nothing but money-making enabling them to make mad expenditures for hideously vulgar and intrinsically immoral purposes; when all this is realized, — then, indeed, we begin to be drawing nearer to the scientific interpretation of the problem of crime.

Sessions yesterday denounced dance halls when he sentenced Paul Sanford, 28 years old, and his brother, Laurel 26, both of 410 Cathedral Parkway, to penitentiary terms for impairing the morals of two 14-year-old girls. The brothers had pleaded guilty of detaining the girls several days in their apartment after they had met them in a dance hall in West Sixty-sixth Street. 'This is a typical case of hundreds that are brought into this court every month,' said Judge Mancuso. 'The evidence shows that men meet girls in disorderly clubs, speak-easies and kindred places, and the results are always the same. Such places are nothing but incubators of crime.'" Here, again, we are confronted with a conspicuous phase of the disintegration of the family; girls of twelve and fourteen are permitted by their parents to visit dancing halls and all kind of night resorts where they meet perfect strangers who indulge in lust and sexual depravity.

CHAPTER V. — EDUCATION AND THE PRESS

A. *Education*

88. Sociologic Meaning of Education, Different Theories. 89. Education and the Aetiology of Crime. 90. Social Education — General Principles. 91. Education as the Agency Generating Social Instincts. 92. Education and Specific Social Instincts — Discipline and its Autonomic Property. 93. The Principle of Rhythm. 94. Psycho-Biological Nature of the Rhythmic Propensity. 95. Examples of Psycho-Rhythmics. 96. Individual and Social Rhythms Harmonized Through Education. 97. Moral Element in Education. 98. The Laic School and Moral Neglect of the Young. 99. Education and Aesthetics. 100. Increase in Juvenile Criminality. 101. Illiteracy and Criminality. 102. Concluding Remarks on Education.

B. *The Press*

103. The Press and Its Educational Significance. 104. The Press and the Formation of the Criminal Propensity. Theoretical Data. 105. The Press and Advertisement of Crime. 106. Criminogenic Headlines in the Daily Press. 107. Advertisements and Criminogenic Impulses. 108. The Press and Criminal Investigation. 109. Concluding Remarks on the Press. 110. Literature and Art in Their Relation to Criminality. 111. "Collective Exhibitionism" in Literature and Art.

88. Sociologic Meaning of Education. Different Theories. Among the social factors which exert a marked influence upon the formation of criminal habits is education in its perverted forms.

The term education has been differently defined in pedagogics. Kant thought that "the aim of education is to develop in every individual that perfection to which he is susceptible." According to James Mill, the object of education is to make the individual "an instrument of happiness" not only for his own sake but also for the benefit of his kinsmen. These essentially utilitarian conceptions are closely affiliated with the basic principle of Spencer's credo which makes happiness dependent upon the complete development of our vital faculties. On the other hand, Pestalozzi saw in the combination of intellectual instruction and manual training the sound foundation of pedagogy, while Jean Jacques Rousseau, in his "Emile," and more particularly, Tolstoy, in both his novels

and philosophical works, advocated a system of education conforming to the laws of nature and assuring the utmost freedom in the process of acquiring knowledge.

Without going into the merits of these and various other theories, the fact must be noted that the writers belonging to the XVIIIth and XIXth centuries, sought to interpret education mainly from the standpoint of the individual himself, rather than in the light of its social value. Still, it must be remembered that whatever, and much as education may give to the individual personally, its proper function cannot be considered fulfilled so long as the knowledge, habits and tastes thereby acquired are either in disharmony with or in opposition to the interests of society as a whole.

That education has a distinct socionomic character is obvious. In fact, the whole fabric of modern civilization is more or less the result of education in the broad meaning of the word, which goes far beyond school training and other officially recognized pedagogic programs.

For this reason, sociology justly regards education as *the* great power in promoting and moulding collective psychology, which, in turn, is requisite to orderly life and progress in the fields of social engineering.

Some philosophers, like Locke and Helvetius, went as far as to assert that all individual differences are exclusively due to education. This view substantially was adopted by Jacotot,[1] and more recently, — by Benjamin Kidd, in his well known volume " The Science of Power."

It does seem that the hypothesis of the all-embracing influence of education upon man's mental and moral character is at variance with the latest discoveries of psycho-biology which demonstrate the two-fold nature of human behavior; on the one hand, it is governed by excitations from without, while — on the other — the specific reactions or responses arising in consequence of given stimuli, are conditional upon the neuro-psychic constitution of the individual himself.

It is to be regretted that many experienced criminologists, not excluding Garofalo and Ferri, have treated the subject of

[1] See his "*Enseignement Universel. Langue Maternelle,*" Paris, 1823.

education in both its aspects — the socionomic and the criminogenic — in a rather casual manner. Thus, in his " Criminal Sociology," Ferri merely remarks:

" For the very small part which education plays as a determinant of individual conduct in comparison with the much greater influence exercised by conditions determined by the physical and social environment, it is necessary to add the moral training which results not from a sterile provision of empty and baseless maxims, but from lessons of experience and example." [2]

After this brief, and, by no means explicit, statement, Ferri turns to environment, leaving the reader without any specific information on the psychologic and sociologic significance of education, and especially on those of its phases which exhibit a pathogenic and criminogenic character.

89. Education and the Aetiology of Crime. Criminology — in our judgment — should not evade the discussion of the educational problem in its relation to crime, on the alleged ground that the subject properly belongs to either pedagogy or sociology. On the contrary, when dealing with the aetiology of delinquency, the criminalist is compelled to consider the fact that education, not only as a given system of didactics, but also as the sum total of empiric experiences derived by the individual from the various educational agencies of the social order, forcibly and directly reacts upon the mental and moral makeup of every member of the community. Because of this consideration we shall examine some of the psycho-social aspects of education in detail, even at the risk of being accused of attempting to deviate from the immediate subject of our inquiry.

Education should be treated as an integral element of social environment. Moreover, the constituent changes taking place in the social structure, in consequence of educational influences, are not confined to the mechanical accumulation of concrete knowledge, but, themselves, enter into the evolutive process moulding the social philosophy of a nation.

[2] See Enrico Ferri, " Criminal Sociology," pp. 272 and 273, Boston, 1917. Compare Garofalo's, *Op. Cit.*, pp. 139, 180 and 256.

The educational factor, thus conceived, produces the following results:

a. develops our innate faculties,
b. generates new faculties,
c. imparts to us a certain amount of positive information regarding ourselves and the outside world,
d. builds our habits, manners, and convictions cultivating our tastes,
e. tends to determine our place within the social organization to which we belong, and
f. frames the basic principles of our social conduct.

It will be easily understood that education, bringing about all these changes, is not — and logically cannot be — merely an individual experience; it constitutes a momentous social factor, sometimes bearing beneficial and constructive consequences, but equally capable of being abused or perverted. In the latter event, education becomes a dangerous weapon of social destruction, with a pronounced pathogenic and criminogenic effect upon both the individual and the community of which he is part.

The structuralization of the delinquent disposition in the so called " schools of crime " as well as the acquisition of professional skill by recidivists in penitentiaries and " thief centers " have been alluded to in Chapter II, §§ 46–48. Here, it may be added that criminality does not arise because in some locality there happens to be a " school of crime," but such a " school " is possible because professional criminality is in existence. However, deliberate criminal instruction, being a conspicuously anti-social manifestation, is altogether different from education in its sociologic sense.

90. Social Education — General Principles. Criminology is primarily interested in the following two general objects of education:

a. The harmonic development of the natural faculties of the human being, and

b. The adaptation of the faculties, thus developed, to the social order.

In the aetiology of criminality the second aim is of special weight, and begins to engage everincreasing attention on the part of the German and French sociologists. Kerschensteiner calls this ramification of pedagogy "*Staatsbürgerliche Erziehung*," while Émile Durkheim makes it the corner stone of his entire educational system. He maintains that schooling and training only then can successfully perform their ultimate integrative task, when they originate in the individual three vital principles:

1. The spirit of discipline,
2. The conception of abnegation, and
3. The quality of autonomy.

It will be shown that in addition to these three essential elements, sound nurture must comprise a fourth ingredient which is the impartation and systematic cultivation of what might be called the *harmonic, rhythmic or musical emotion.* Criminology associates this aspect with some of the fundamental problems of social psychology.

The psychic life of man, — it will be recalled — is composed of two contrastive factors the *egocentric instinct* and the *social disposition.* But, while the former is a congenital, and consequently deeply rooted tendency — the social propensity (or to use Dr. Trotter's term — the "herd-instinct"), is not an inherent faculty; it is bred by society itself for the purpose of creating a contra-stimulant to the non-social and egoistic proclivities dwelling in human nature. The impulses of the latter class, in order to be set in motion, do not have to be artificially promoted, whereas the origination of the "instincts the other way," requires a series of organized efforts on the part of the commonwealth, becoming an important function of the state.

91. Education as the Agency Generating Social Instincts. The social antidote to egocentricity and morbid inclinations is generated by the community mainly through education; its system usually represents the average resultant of the prevailing ideas, beliefs and ideals of a specific social order. The principals and concepts which are urged upon the individual are designed to adapt him to the standard modes and common habits

of the social union; and, thus, through the instrumentality of education, the crude modes of living of primitive men are converted into a more discriminative, refined and complex social existence.

Says Durkheim:

"In fact, the social actuality does not come ready-made and given by the primitive constitution of man; moreover, it is not the result of spontaneous development. Of his own record, man was not inclined to submit to a political authority, respect a moral discipline, consecrate or sacrifice himself. There was nothing in our congenital nature which necessarily predisposed us to become servants of deities, — the symbolic emblems of society, — to worship them and subject ourselves to privations in order to honor them. Society itself, in the measure of its integration and consolidation, has evoked from its own bosom those great moral factors in the presence of which man feels his inferiority. Besides, if we disregard the vague and uncertain tendencies which might be due to heredity, — the child, when entering life, brings with him nothing but his individual nature. Thus, with the advent of every new generation, society finds itself confronted with an almost clean swept board on which construction has to be started anew. It then becomes necessary, by the quickest means, to append to the egoist and non-social being which was born, — a different one — capable of leading a moral and social existence. Such is the task of education and its importance will be easily conceived. It is not confined to the development of the individual organism in accordance with the limits set by nature, but its aim is to divulge those hidden forces which are ready to be revealed. Education creates within a man a new being." [3]

Were we to imagine a human being transplanted from another planet, where education is non-existent, to a modern community, we would promptly become cognizant of the fact that his ideas, manners, habits, his whole conduct, — could not be tolerated. They would stand in conspicuous contradiction to the immutable rules of our own moral credo and social code. His behavior, no doubt, would be governed predominantly, if not exclusively, by the unrestricted desires and impulses of his

[3] Professor Émile Durkheim, "*Éducation et Sociologie*" pp. 50–51, II. Ed. Paris, 1926.

ego. In the entire range of his emotions there would be nothing to counteract, or even modify, the egocentric tendencies, so that from the standpoint of our own social philosophy, he would have to be considered a *perfect criminal*. In a way, his conduct would resemble that of a child, whose acts are merely instinctive reactions to outward excitations and bio-physical urges.[4]

But an infant, from his very early days, meets along the path of his mental development, a great number of inhibitory influences from without, calculated to subdue the egoistic motives in his *modus vivendi* by subordinating them to different altruistic considerations which necessarily form part of the social constitution. The family, educating the child and teaching him the A-B-C of morality, performs — or at least is supposed to perform — an important social service.

92. Education and Specific Social Instincts. Discipline and its Autonomic Property. Indeed, it is the family that helps the child to grasp the first notion of education which, according to Durkheim, is *discipline*. It is also through the agency of the family that embryonic conceptions of self-denial flow into the consciousness of the junior members of society. Every day the infant learns the great lesson of social life: he witnesses acts of self-restraint on the part of his parents, and begins by gradu-

[4] Anton Chekhov, the famous Russian novelist, in one of his short stories, gave a graphic picture of the conduct of "Grisha," a boy, who, to use the author's own words, "was born two years and eight months ago." The little hero is out for a walk with his nurse,

"Suddenly he hears dreadful trampling. . . . A company of red-faced soldiers with bath brooms under their arms, measurely stepping, march down the boulevard straight to his encounter. Grisha grows cold from horror and interrogatively looks at his mamie: Is it dangerous? — But the nurse does not run nor weep, — so, there is no danger. Grisha follows the soldiers with his eyes and begins himself to march, keeping their time. — Two big cats with long muzzles, with tongues hanging out and their tails sticking up, run across the boulevard. Grisha thinks it is time for him to run, too, and he runs after the cats. — Stop! — shouts his mamie, roughly grabbing him by his shoulders. — Where are you running? Who allowed you to be naughty?

There is somebody's mamie: she sits holding a small trough with oranges. As he passes her by, Grisha silently takes one orange.

— What is the matter with you? — shouts his companion and slapping his hand, takes the orange away from him — Fool!"

Here, then, in a nutshell, we have the simple psychology of a child with its primitive responses to outward excitations, imitative impulses and non-social emotions. In this sketch we also perceive the first rude attempt to "educate" the child in the sense of building up his social instincts.

ally comprehending the social significance of their attitudes and deeds. Step by step, the principle of *duty* intervenes, with the result that the egocentric instincts, before they assume a specific form of misconduct, are surrounded by a network of socionomic impulses and precepts which become the foundation of the system of inner self-defense, with its moral dictates and social discipline, arresting the stream of selfish feelings and criminal tendencies.

In order, however, that the contest between the two conflicting psychic currents may invariably terminate in favor of social discipline, it is necessary to have the child *autonomically* accept the rules of behavior prescribed by society: He must recognize the soundness and practical convenience of submitting his egoism to the commandments of social altruism.

It is important that the psychic condition of non-resistance to the constructive social impulses, in every instance of an inner conflict, be reached promptly, as otherwise the struggle would consume too much vital energy and ultimately lead to a state of nervous prostration. By degrees, the act of submission to the precepts of the social order acquires the character of a mere *habit* which is adhered to, much in the same way as any other habit, almost *automatically*. This, then, is what Durkheim and Paul Fauconnet mean when they use the term " the spirit of autonomy " in social education.

93. The Principle of Rhythm. In every society, besides its structural organization, or anatomy, which is its *static* symptom, we perceive the phenomenon of motion, or the *dynamic* property, transmuting a given social combination into a living entity. This peculiar conglomeration of human beings — which is neither an organism nor a mechanism — in its motion, is subject to certain rhythms, or specific *social tempos,* determining the velocity of its evolutive growth, setting limits to social contrasts and acting as some sort of dynamo-genesis in the regulation of the quantity and tension of social pulsations.

The state, being the highest and most developed expression of the social principle, is governed by some law similar to the biological process which produces the phenomenon of tropisms among the lower animals and plants. In these rudimentary

manifestations of life, we are met with a number of innate and unlearned faculties of the organism to react in strictly definite modes to external stimuli (chemo-tropisms, photo-tropisms, electro-tropisms and geo-tropisms).

Likewise in human societies, alongside with the condition of friction, we observe the phenomenon of *socio-tropism,* or the sum total of natural social responses to specific influences from without. These functions tend to preserve the existence of the social entity, assuring its normal evolution.

It is the province of sociology to examine the laws of the rhythmic activities of society, while the interest of criminology in this subject is confined to a few general observations, having a direct bearing upon the mechanism of the formation of delinquent impulses.

The principle of social life is expressed in the condition of constant motion which, under normal circumstances, conveys to the social group that property which may be denoted as *instable* or *unsteady social equilibrium.*

G. Fano, the eminent Italian physiologist, succeeded in proving the fact that excitability of the living organism, producing the phenomenon of instable equilibrium, equally generates the process of rhythmic motion which is best expressed in the functional work of the heart.[5]

Much in the same way, the social rhythm seems to be closely affiliated with the faculty of the social body to respond to the stimulating effect of the basic environmental factors,— like geographic conditions, racial symptoms, density of population, proportional distribution of the inhabitants in the rural and urban districts, etc., which in the domain of social relationships, act as outward excitations.

[5] See Professor G. Fano's "*Le Cerveau et le Coeur*" (translation from the Italian) Paris, 1925, Chapter V., dealing with the subject of excitability and automatism is of special interest to those who approach the problems of sociology from the standpoint of biology. The volume contains also highly instructive photograms tracing the mechanical and electrical rhythms of the heart of the European turtle (Emys Europaea) and the auricular and arterial rhythms of the heart of a human embryo, pp. 117 and 132. In our day, cardiology (cardiodynamics and electrocardiography) is fully equipped to study with mathematical precision the heart rhythms and all the minute changes in the cardiac cycle. On this subject, see Dr. St. d'Irsay's article, "Modern Cardiology," The Scientific Monthly, issue May 1926, pp. 445–452.

On the other hand, just as in mechanics, the motion of the body conveys motion to all of its parts, — so the individual member of the social group, in his personal life, inevitably participates in the rhythmic activities of the community to which he belongs. Between the motion of the entity and the motion of its part some degree of conformity must be maintained, as otherwise friction between the two rhythms — social and individual — would be intensified to the extent of making community life impossible.

In the normal adult person, under the influence of education, we perceive a marked tendency of adapting himself to the social *milieu*. In this respect, again, human existence reveals many symptoms similar to those observed among the inferior biological varieties which are subject to the law of rhythm or symmetry thus formulated by Dr. Georges Bohn:

"If as a result of an amputation, the symmetry of the body of an animal is destroyed, this act tends to break up its equilibrium; but with the lapse of time, by means of different operations, the symmetry of the body is restored." [6]

Of course, in social life the process of individual adaptation or assimilation is more complex than in the world of primitive biological beings; there the manifestations of symmetry are merely mechanical responses to excitations, whereas, in human societies the condition of rhythmo-dynamics necessarily entails intricate, and sometimes heterogeneous, psycho-social transactions.

94. Psycho-Biological Nature of the Rhythmic Propensity. The harmonic or rhythmic propensity is firmly embedded in our psychic constitution. This field is by no means properly explored, and many points pertaining to the psycho-biological nature of rhythm still remain undetermined.

It is probable that these impulses in man are dependent upon the presence of some neurone or group of neurones in our nervous system. Recently, it has been suggested by a Swiss scientist, Professor Hoepli, that the nervous center, registering and transmitting musical emotions, is situated under the bend

[6] Dr. Georges Bohn, "*La Naissance de l'Intelligence*," p. 114, Paris, 1909.

of the metatarsus.[7] Whether this hypothesis is correct, cannot be asserted with any degree of accuracy. Perhaps, there is more truth in Dr. Maurice Dide's theory, according to which the rhythmic movements take their origin in the regions of gray motor cells, while the lesions of the lenticular cells cause the disintegration of our rhythmic faculty, whether by retarding the spontaneous movements or causing frequent involuntary oscillations.[8]

However, the important thing to conceive is that rhythmic emotions appear at a very early stage of life, being, perhaps, combined with subconscious imitative impulses.

Jean Pérès undertook a series of clinical observations, which demonstrate the fact that infants of the age of six to ten *weeks* are susceptible to rhythmic excitations. In this connection he states:

"E—— having scarcely attained the age of six weeks, laughs with pleasure when one talks to her or sings in a very soft voice; she is amused, and with her upper lip folded like a funnel, she makes an effort to utter some articulations. At the age of seven weeks, E——, listening to my whistling, joins her lips as though in an attempt to whistle, obviously imitating not that which she sees, but what she hears. . . ."[9]

Further experiments seem to indicate that the rhythmic impulse oftentimes is accompanied by inhibition, which is especially noticeable in the effect of lullabies upon infants. Truly, there is something in common between the psychic state of a child, falling asleep to the gentle melody of a cradle song and the hypnotic state in which, according to I. P. Pavlow, "the stronger excitations from without cede their place to the weaker excitations provoked by the *words* (*paroles*) of the hypnotizer.[10]

[7] The five bones between the ankle and the bones of the toe.

[8] Dr. Maurice Dide, "*Introduction à l'Étude de la Psychogénèse.*" See paragraph on the Motor Rhythms, p. 97, Paris 1926.

[9] *Journal de Psychologie*, XXIII Année, No. 5, May 15, 1926, p. 558.

[10] I. P. Pavlow, "*Le Travail des Hémisphères Cérébraux*," *Journal de Psychologie*, Vol. *Cit.*, p. 505. Italics ours. We believe that in the case of hypnosis man's response in the form of inhibition is due to the *modulations of the voice* of the hypnotizer, rather than to the meaning of the words which he utters. The hypnotic effect of musical emotions upon snakes is commonly known. But the same phenomenon has been observed by us both among the frogs and mammals with a highly developed nervous system, — like dogs, cats and horses.

Thus, it will be seen that the rhythmic emotion in some way, as yet not accurately ascertained, is associated with our nervous constitution, while on the other hand, some of its symptoms extend to the unexplored region or hypnotic phenomena.

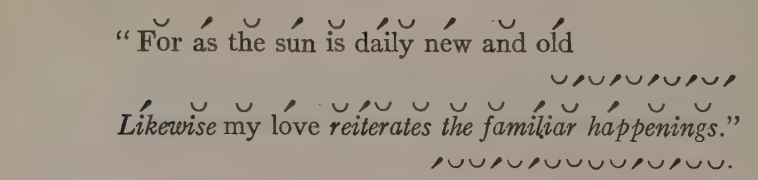
95. Examples of Psycho-Rhythmics. There are many manifestations of the rhythmic impulse which should be carefully studied, because their suppression or perversion tends to increase social friction and, *mutatis mutandis,* to intensify the criminogenic processes. Here, we shall mention but a few more typical and quite simple examples:

1. A person is asked to name even numbers, starting with 2. He does so, and almost automatically follows the series: 2,4,6,8,10,12. It actually is difficult for him to break the order interjecting, now and then, odd numbers. For instance 14,16, 18,*19*,20,*23*, etc. The reason therefor is that the rhythm of his thought is interrupted.

2. Let us take two concluding lines of the Shakespearean sonnet:

> " For as the sun is daily new and old
> So is my love still telling what is told."

If, in the first place, we should try to break the rhythmical arrangement of the second line, after having recited the first line, we shall experience a distinctly unpleasant feeling of disharmony. Thus:

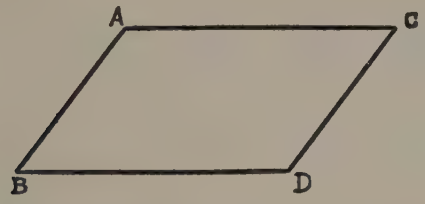


Here, then, the deliberate derangement of the poetical meter causes a reaction of revulsion which is due to the fact that our musical emotion is " hurt."

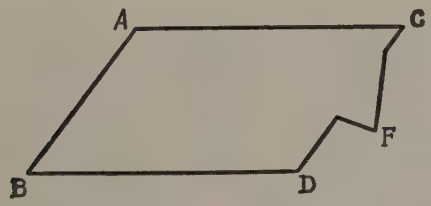
Furthermore, the rhyming of the words " old " and " told " gratifies our musical sense. However, should we substitute for " told " the synonymous word " said," we would again be subjected to the same irritating sensation of asymmetry.

3. We walk down the street; we meet a band of musicians playing a march. *Instinctively* we are prompted, in our own pace, to adhere to the musical tact of the march, and it is actually difficult to march *against* the downstroke of the measure.[11]

4. The harmonic emotion is intimately allied to the sense of symmetry and proportion. A normally developed person is, as it were, *naturally* inclined towards symmetry. On the contrary, every conspicuous manifestation of asymmetry, is hideous to his rhythmical propensity. Let us draw a parallelogram:



If, instead of CD we should draw a broken line CFD



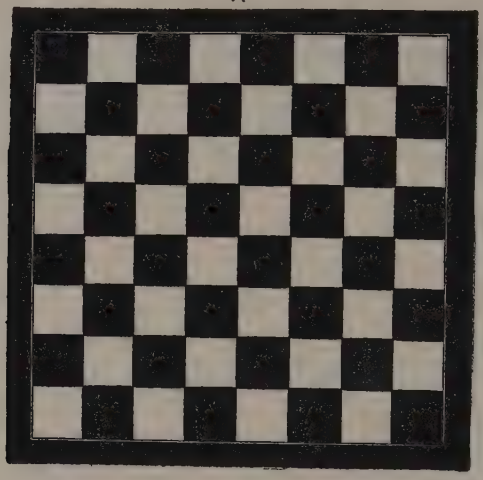
our eye would be offended because the principle of visual symmetry is violated.

5. The mere interruption of visual impressions does not, as a rule, interfere with the harmonic impulse, provided the changes from one color to another are regular. For instance, looking at a checkerboard, we do not experience any feeling of disharmony because the white and black squares appear there in an alternate order. Moreover, the dimensions of the squares, both black and white, are equal. But the psychological effect of visual breaks is quite different if within a quadrangular

[11] An interesting article reviewing the experiments of P. Farez, on the interrelation of music and the general states of our nervous system has been published in the *Journal de Neurologie,* January 5, 1914.

frame we use the black and white promiscuously, without observing the rules of symmetry, in a " futuristic " style. Comparative examination of A and B will corroborate our assertion.

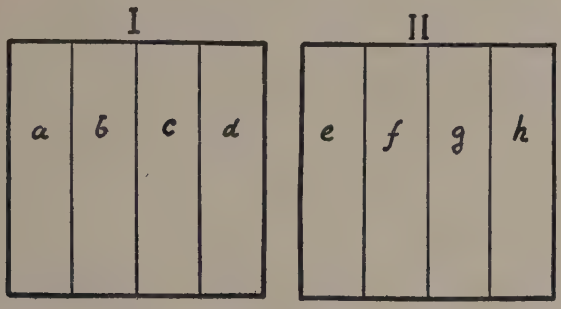
A



B

6. Now, the last example: We examine two marvelous pictures, as " St. John " of Leonardo and Raphael's " Sistine Madonna "; we admire them both. We shall now denote the first picture by " I " and the second by " II," dividing each into four equal sections: a,b,c,d and e,f,g,h.

If then, we were to cover sections c and d of " I " with sections e and f of " II," completely disguising sections g and h of " II,"



we would obtain a painful optic impression because of the illogical *caesura* in the symmetry of the color rhythm.

96. Individual and Social Rhythms Harmonized through Education. Thus, we are confronted with two classes of rhythms: (a) social and (b) individual. It has been stated that the two have to be brought in harmony in order to prevent excessive friction between the social entity and its individual ingredients. The subordination of the individual anti-social motives to the social rhythm, consequently, is a social necessity, a *conditio sine qua non* of properly constituted political existence.

Society achieves this aim *primarily* through education, more particularly, by building up and cultivating the rhythmic symptom in the individual conduct. It is mainly in this way that the conflict between the entity and its part can be successfully eliminated and the natural condition of social friction diminished. Punishment, which is the legal reaction of the state against the excesses of egocentricity, is nothing but a repression of something that ought not to have taken place at all, whereas its application is largely calculated to create a threatening or restraining impression upon the community as a whole.

But it is only through an adequate system of education that a person can be brought in accord with the social order. The mere fact that there is a rigid penal code in existence is not going to curb criminality, so long as the individual:

a. Fails to grasp the fundamental rules of social discipline;

b. Is unable consciously and willfully to accept the precepts of the social order;

c. Remains in disharmony with the social rhythm of the community to which he belongs; and

d. Does not know how to participate in the compound work of the social order without coming in collision with its commandments.

Of course, it is not the policeman, with his scaring motto: "You can't win," nor the penitentiary with its electric chair — that are capable of bringing up a generation of law-abiding and useful citizens. This aim can be achieved exclusively through education in all its ramifications or departments, harmoniously working together for the moral betterment and mental development of youth.

Summing up these observations, we can lay down the following general principles:

I. The fundamental socionomic factors exert a continuous and compound influence upon a given community.

II. These factors, acting as outward excitations, bring the social entity in a state of instable equilibrium and originate a series of responses which, by reason of the continuity of the stimulating influence and its uniform character, acquire a rhythmic tempo.

III. The individual of the social group, in his personal conduct, seeks to adapt himself to the rhythm of the entity, thus avoiding maladjustment.

IV. The inability of the individual to conform to the social rhythm automatically intensifies social friction, and brings him in conflict with the social order which, in its extreme manifestations, assumes the form of crime.

V. The adaptation of the individual rhythmic emotion to the rhythm of the social order can be achieved only through the instrumentality of properly conceived education.

97. Moral Element in Education. The four rules of arithmetic and the binomial of Newton, *an und für sich,* neither

create individual happiness nor produce social accord. By applying the methods of Alfred Binet, with the aid of experimental psychology and methodical survey, naturally, it is quite within the limits of possibility to improve the technique of public teaching, mainly in the field of primary education. Still, the center of gravity in modern pedagogic thought is not confined to the solution of any particular technical problem. What, in the judgment of sociology and criminology, the present-day school conspicuously fails to evolve is the moral *milieu,* that atmosphere of moral principles and social convictions which would prove strong enough to counterbalance and overcome, first, the egocentric propensity, and secondly, the mass of loose-minded doctrines broadcasted *urbi et orbi,* tending to undermine general standards of decency and culture.

Professor Floyd Henry Allport, is quite right when he asserts:

"The school is pre-eminently the institution for socializing the individual. . . . Education must bring about a conditioning of these approaching and withdrawing tendencies by the laws and customs of society, and must modify their efferent expression along lines which are socially constructive. . . . In this work the school merely continues the earlier and vitally necessary training in the home. The school therefore should be an institution, not merely for endowing the individual with abstract knowledge, but for so modifying his responses of avoidance, hunger, and love that they shall serve as means to coöperative social living." [12]

This is what the school should be, but which, unfortunately it is not. In much too many cases the school, instead of being an agency for moral integration, is an instrument of moral disintegration, — a subtle device for the organization of social disorganization.

In general literature much attention is being paid to the question of the laic character of modern education; its merits and shortcomings. On various occasions the assertion was made that by eliminating religious instruction from public schools, the state has been destroying its own social foundations.

[12] Professor F. H. Allport, "Social Psychology," pp. 402 and 403, Boston and New York, 1924.

In this connection Garofalo's opinion may be cited: He says:

" The religious emotions when aroused in early childhood have an undoubted effect upon morality. However faint may grow the traces which they always leave, these never entirely disappear, even in the breakdown of faith. So vivid is the impression which the mysteries of religion make upon the imagination that rules of conduct imposed in the name of Divinity may become instinctive." [13]

Some French writers have taken an extreme view on the subject. For instance, Professor Sertillanges, addressing the Catholic Institute in Paris, on the role of the family in education stated:

" I assert that for a believer the laic school in the sense of a school without religion, is an unnatural, anti-human proposition, a *monster*, as Pascal would call it." [14]

Even though the literal truth of Sertillanges' bold assertion may be doubted, the fact must be recognized that strictly laic education leaves a big gap in the consciousness of those taught. It fails to give an adequate answer to those questions of the moral order which invade the juvenile mind. Formal teaching deserts the young at the very moment when they begin to look for a " symbol of faith," in the absence of which they are unable to comprehend the significance of what Spencer calls " the social sanction." This is why we believe Professor Olive Wheeler was justified in making this statement:

" The period of youth is especially critical in regard to the development of one's philosophy of life. At this stage not only is the rate of physical growth phenomenal, but so many new intellectual interests and new emotional experiences crowd in upon the individual that the whole balance of his personality tends to be disturbed; and it becomes necessary for him to reorientate himself to society and to the other spiritual forces which he now perceives to be at work in the universe. He is powerfully impelled from within to form a

[13] *Op. Cit.*, p. 140.

[14] D. A. Sertillanges *" La Famille et l'État dans l'Éducation,"* p. 212, Paris, 1907. On the subject of the detrimental consequences of laicism, two important articles by T. D. Thomas Pègues, were published in the January and February issues (1926), of the Monthly Bulletin of the Franco-Belgian *League Apostolique des Nations.*

philosophy of life. *It is,* therefore, *fundamentally important that at this period every individual should have opportunities for further education;* and that the teaching given him — whether in continuation, technical, or secondary school — *should not only prepare him to earn a livelihood, but should also aid him in his quest for a religion.* It is in the light of this need, and also of the laws that govern the growth of a philosophy of life, that we are most likely to find a solution of the difficult problem of the curriculum which is suitable for this period." [15]

In exclusive cases Renan's formula: "*La foie disparue — la morale reste*" ("faith having gone, morality remains"), may be correct. Yet, *as a rule,* with the elimination of faith, morality disappears, and then there remains nothing but the threat of physical coercion to prevent law-breaking from becoming a habitual mode of conduct.

98. The Laic School and Moral Neglect of the Young. The state, having once taken the decision to ignore the stabilizing nature of religion, was logically bound to eliminate religious instruction from the official school programs. But the criminogenic effect of the laicization of public teaching became all the more apparent when the modern family, on its part too, definitely abandoned the idea of giving the children religious or moral instruction of any kind.

The younger generations have thus been placed before the following fundamental facts:

a. Official agnosticism in the school,

b. Indifference towards religion on the part of the family, and

c. Utilitarian philosophy of a mechanical civilization founded upon rationalism and craving for material gain.

99. Education and Aesthetics. The "socialization" of the individual, advocated by both sociology and criminology, most certainly cannot be attained by injecting into the brains of the young doctrines of zoölogical class hatred and unrestricted materialism. Society itself, is not a material conglomeration, but rather a psychic union of human beings, brought together for

[15] Professor Olive A. Wheeler, D.Sc., "Bergson and Education," p. 82, Manchester, 1922. Italics ours.

the purpose of living a common life, which, owing to social altruism, tends to assure an existence more worthy than that pursued by the individual in a state of savagery.

This view is quite in line with the prevailing American conceptions of the socialization process. According to Professor Giddings it is due to this factor that the vital conditions of social coöperation is made possible. On the other hand, Charles A. Ellwood says:

"The highly socialized individual becomes marked by his sense of responsibility for the welfare of his group. We say that he is socially conscious because he thinks not so much of himself as of his associates." [16]

In other words, the aim of socialization is the inculcation of social altruism which is the antithesis of egocentricity with the whole array of its criminogenic consequences.

With religion ousted from home and school, something has to be found in its stead, — something capable of ennobling an adolescent heart.

Shifting and vague are the concepts of youth. Difficult, indeed, is the task of mastering the immature mind. Bone-dry moralization and abstract ethical formulas, devoid of the mystical sanction of religion, hardly ever produce the desired result.

It is not at all uncommon for a system of education seeking to appeal to reason alone to generate among school children bitter resentment to school itself and everything taught therein.

Referring to his own school days in Boston, Henry Adams remarked:

"The dislike of school was so strong as to be a positive gain. The passionate hatred of school methods was almost a method in itself. Yet the day-school of that time was respectable, and the boy had nothing to complain of. In fact, he never complained. He hated it because he was here with a crowd of other boys and compelled to learn by memory a quantity of things that did not amuse him." [17]

[16] Professor Charles A. Ellwood, "The Psychology of Human Society," pp. 126 and 127, New York, 1925. See also Dr. Charles Platt's instructive book "The Riddle of Society," Chapter XII, pp. 231–234, New York, 1926.

[17] "The Education of Henry Adams," p. 37, 25th Ed., Boston, 1924.

Likewise, Renan — the great pagan of the XIXth century — after all the ecclesiastical schooling wrought upon him, first, at *Saint Nicholas du Chardonnet*, then, in the *Issy Séminaire*, and, finally, at *Saint Sulpice* — finished by embracing the principles of that eclectic philosophy which might be described as "aesthetical agnosticism" with a strong leaning towards mathematics.[18]

Still, in the juvenile soul there are strings which, if wisely touched upon, must produce a musical accord, because of the presence of the rhythmic or harmonic motion to which we have alluded in §§ 96 and 97.

The great masterpieces of world literature, the profound, and yet simple, words spoken by men of wisdom, taste and culture, coined by them into beautiful prose and sonorous rhymes; or solemn thoughts for ever cast into the "silent form" of immortal marbles, bronzes and canvases; or those heavenly dreams which have found their unique expression in symbolic rhythms of scherzos and sonatas, — all these sublime manifestations of the human spirit are singularly fitted to awake in youth harmonic responses in the form of altruistic emotions.

On this ground, Tarde voiced his conviction that education without the classical tradition, devoid of all poetical influences and aristic refinement, lacking reminiscences and cultural recreation, not only is narrow and repulsively utilitarian, but essentially criminogenic.

"A people — says Tarde — who, swayed by the utilitarian doctrine, sacrifice these pure joys, will regret them; for when in these unbridled hearts, nothing will restrain ambition, love, envy, hatred, cupidity, men should not be surprised to see the tide of their criminality climbing every year to higher and higher levels. My conclusion is that *the danger would be great, after having suppressed religion in the primary school, to weaken the aesthetic side of education in colleges, which, on the contrary, should be rather strengthened.*"[19]

100. Increase in Juvenile Criminality. The non-social character of modern education, both in the primary and high schools,

[18] Compare Renan's "*Souvenirs d'Enfance et de Jeunesse*," pp. 16 and 17, 209, 213, Paris, 1916.

[19] G. Tarde, "*La Criminalité Comparée*," p. 119, 8th Ed., Paris, 1924. Italics ours.

begins to exhibit the full measure of its criminogenic meaning when the boy or girl reaches his or her critical age, which may vary from 16 to about 19. This period is the fever of life, when the underdeveloped mind is subjected to all kinds of temptations, and the young person, deprived of firm moral convictions, faces the danger of falling into the delinquent strata of society. This condition is reflected in statistical surveys of practically every civilized country.

With the secularization of the school, the " emancipation of the thought " and the dissemination of primary education, juvenile criminality has not decreased; on the contrary, from year to year it has been steadily swelling.

H. Joly, in his valuable work, *" L'Enfance Coupable,"* demonstrated the growth for fifty years (1838–1888) of both general and juvenile delinquency in France. The total increase was 133%. However, juvenile criminality, for the same period, showed an augmentation of 140% while the number of criminals between 16 and 21, increased 247%.[20] From 1888 to 1895 the ratio of crimes committed by persons below the age of 16, virtually remained on the old level, *viz.*, about 6,000 persons every year; but the number of criminals between 16 and 21 continued to climb steadily, — approximately 500 persons per annum. Against 20,836 juvenile delinquents recorded in 1875, there were 30,853 — in 1895. The number of those convicted for homicide between 16 and 21, increased from 216 — in 1872, to 370 — in 1895.

On the strength of French statistics, referring to the year 1907, we have prepared the following table:

Age	*Percentage of convictions per 100,000 of the population.*
11–15 years	0.6
16–18 "	7.8
19–20 "	41.6
20 years and above	11.4 (average) [21]

It will be noticed that the bulk of criminality is made up of persons having reached their nineteenth year, whereas, indi-

[20] *Op. Cit.*, p. 5. [21] Compare J. L. de Lanessan, *Op. Cit.*, pp. 135–137.

viduals above the age of twenty yield a far smaller percentage of delinquency.

In Germany, the progress of juvenile criminality was, perhaps, still more noticeable. In Prussia, for instance, convictions of criminals between the ages of 12 and 18 accumulated as follows:

1882	30,719
1889	36,700
1893	46,078
1894	42,251
1898	47,975
1899	45,863 [22]

It is interesting to note that among the convicted approximately 66% were 16 to 18 years old. For the same years juvenile delinquency in the United States manifested an increase of 25%.

To bring the information up to date, we shall cite the following figures gathered by the Missouri Association for Criminal Justice:

"In 1914, 42.61% of prisoners in the Penitentiary and Boonville Reformatory were between the ages of 17 and 24, inclusive; in 1924, 52.5% of the total number of prisoners in those institutions were from 17 to 24 years of age — an increase of nearly 10%. In 1914, 5.2% of the total prisoners in those institutions were 17 years of age, and in 1924, 8.19% were of that age. In 1914, 4.17% and in 1924, 6.47% were 18 years of age. In 1914, 4.38% and in 1924, 6.58% were 19 years of age. It is significant that while this increase was going on among the older boys, there was even a more startling increase in the major crimes among delinquent juveniles. For example, in St. Louis, highway robbery among juvenile delinquents increased

[22] Quoted from G. L. Duprat, "*La Criminalité dans l'Adolescence,*" p. 28, Paris 1909. For the year 1923, the number of juvenile convictions (14–18 years old) gives a total of 99,390, which, however, cannot be considered conclusive for any purpose of comparison, since the official statistical survey refers to Germany *as a whole,* without giving information regarding Prussia in particular. Moreover, large areas of German territory having been carved out of the former German Empire in consequence of the Versailles Treaty, the figures are not representative of the fluctuations of juvenile criminality in that country. See *Statistik des Deutschen Reichs, Band* 320, *Kriminalstatistik für das Jahr* 1923, p. 2, Berlin, 1925.

over 500% from 1920 to 1924, and during the same period there was a substantial increase in the number of juvenile delinquents charged with carrying concealed weapons." [23]

These figures, we believe, are sufficient to corroborate the assertion that the age between 16 and 19 is the critical period in the life of the average person, coinciding with or closely following school experiences.

Consequently, modern education *does not* produce constructive socionomic results and conspicuously fails to bring the younger generations in harmony with the social order.

101. Illiteracy and Criminality. Strange as it may seem, illiteracy, from the standpoint of criminology, is of little significance. The mere fact that a person is unable to read and write does not induce him to become a criminal.

Statistics prove that the rural areas, where, as a rule, illiteracy is more pronounced than in urban districts, the number of crimes, comparatively speaking, is very low. This condition can be observed in the remote agricultural parts of Spain and France.

Equally, in Russia, prior to the revolution, the Northern regions, with their poorly developed school system, were the least affected by the plague of criminality. On the contrary, in the large urban centers, where primary education was general, obligatory and free, criminality was rampant.

Coghlan, in his well-known volume " Wealth of New South Wales," gives for that part of Australia, the following statistics relating to the year 1880:

	Persons arrested	*Illiterate*	*Knowing how to* Read	Read and Write
Against persons	3,355	222	39	3,094
Against property with violence	990	60	14	916
Against property without violence	4,873	331	69	4,473
Rioting, drunkenness ..	32,878	2,348	473	30,057
Counterfeiting	157	3	4	150

[23] See Report of Arthur V. Lashly, Operating Director, Missouri Association for Criminal Justice — Presented to First Annual Meeting of the Association, Jefferson City, Mo., January 12, 1926, p. 14 and 15.

The United States, where primary education is general, has become a hotbed of criminal activities of all kinds, and it would be impossible to account for this condition by the fact that, despite the colossal expenditures for education, there were in 1920 — 3,084,733 illiterate persons 10 years of age and over, among whom 62.5% were *native born* (Report by the U. S. Bureau of Education for 1926).

If illiteracy has any causative connection with the formation of the criminal propensity, it is confined to the fact that a person unable to read and write usually represents the type of a mentally underdeveloped person who is easily affected by bad environmental influence.

Frequently, however, illiteracy may be a symptom of moral neglect which, of course, has a distinct criminogenic character. But moral neglect of the young is a phenomenon that has an equally destructive effect upon both the illiterate children and those who have been taught how to read and write. Very striking proof of the correctness of the assertion that illiteracy, *per se,* should not be considered a criminogenic factor is furnished by Professor Ernest R. Groves, in his book "Social Problems and Education," — the interrelation of the progress of education and the increase of criminality among the colored population in the United States. The percentage of illiterate Negroes between 1880 and 1920 was as follows:

Year	*Number*	*Percent*
1880	3,220,878	70.0
1890	3,042,668	57.1
1900	2,853,194	44.5
1910	2,227,731	30.4
1920	1,842,161	22.9

Consequently, we see that the number of illiterate colored people is steadily *decreasing*. However, the number of colored prison inmates *increased* as shown in table on next page.

These figures seem to indicate that the modern system of education evinces a well marked criminogenic effect upon the colored population in this country.

Year	*Northern States*	*Southern States*
1870	2,025	6,031
1880	3,774	12,973
1890	5,635	19,244
1904	7,527	18,550
1910	10,081	28,620
Prisoners per 100,000 *of Colored Population*		
1870	372	136
1880	515	221
1890	773	284
1904	765	220
1910	722	323 [24]

102. Concluding Remarks on Education. The utter neglect of religious, ethical and aesthetical elements in modern education, both in the family and the school, is largely responsible for the almost intolerable vulgarity of the public taste. But the lack of mental refinement is invariably accompanied by and reflected in bad manners, which by no means are confined to the lower strata of society. This condition, to the casual observer, may seem unimportant, and yet it is a momentous *anti-social* symptom, signifying disregard of that propriety of social intercourse which, according to Professor Soloviev, is its cultural *minimum*. Even college education which is supposed to create the highest standards of general learning, frequently does not bear any beneficial influence upon the social conduct of the alumni. The theoretical foundation of their training is only a *formal* acquisition of knowledge. But just in the same way as dexterity of the hands may be possessed by a pickpocket or a sharper, so, equally, dexterity of the mind is capable of being utilized for vicious purposes and anti-social ends.

The "alma-mater" in our day is no longer a reservoir of moral ideals and social virtues. In many European countries, but perhaps even more so in America, the average college undertakes to prepare a young man for his profession in as short a time as possible. Accordingly, the academic systems resolve

[24] Professor Ernest Groves, *Op. Cit.*, pp. 319 and 323, New York, 1925.

themselves into: quick work; hasty teaching; parrot-like learning by heart the fragments of digested science, with no traditional background or idea, other than " picking up " some practical information promptly convertible into dollars and cents.

On the other hand, there is much incredulity and scoffing at religion, not because of their alleged wisdom, but rather despite their incurable banality. Coupled with this we perceive an appalling ignorance of genuine art and a complete indifference to the noble principle of Beauty which — to quote Keats — " is truth."

No wonder, then, that many college graduates enter the ranks of society, although with some amount of mental equipment, but with no sound principles or firm moral convictions to guide them through the labyrinth of the social traffic.

Nor does college tend to modify the *" Get Rich Quick "* motto which is fast becoming the fundamental dogma of present-day social philosophy, domineering the minds of the old and young alike.

However, precisely because of the predominance of the materialistic and mechanical ideology in our system of education, and notwithstanding the fact that in the United States, at least, the growth of material prosperity during the last decades has been astounding, — the volume of dissatisfaction and general restlessness, the sum total of moral wretchedness and mental misery, together with the epidemic of atrocious crimes and the alarming spread of professional criminality, — are assuming the proportions of a social calamity.

B. *The Press*

103. The Press and its Educational Significance. Things, which in the way of education, the community fails to find in either the family or the school, may be supplemented by other socionomic agencies. Indeed, it is true that for the realization of social integration modern states have, besides the traditional device of the school, a number of other instrumentalities at their command. Among these, the press and literature may be utilized as effective means for moulding public opinion and bringing about social accord.

As a matter of fact, the press is justly considered among the "Great Powers," exerting an immense influence upon the political and social destinies of mankind. During the last fifteen or twenty years, its unrivalled supremacy in this field has been challenged by the growing popularity of the moving pictures.

In criminological literature the view has been expressed by some writers that journalism invariably plays the part of a criminogenic agency, fostering delinquent impulses and inciting the moral weaklings to imitate the crimes depicted in the newspapers.

Lombroso's words may be regarded as typical of this profoundly pessimistic theory. He says:

"Civilization, by favoring the creation and dissemination of newspapers, which are always a chronicle of vices and crimes, and often are nothing else, has furnished a new cause of crime by inciting criminals to emulation and imitation. It is sad to think that the crime of Troppmann brought the circulation of the *Petit Journal* up to 500,000 and that of the *Figaro* to 210,000, and it was doubtless for this reason that this crime was imitated almost immediately in Belgium and in Italy. . . . The same may be said of those novels which deal almost exclusively with the acts of criminals, like those at present fashionable in France." [25]

More recently, however, this gloomy opinion was modified by the investigations undertaken by Hellwig and Fenton,[26] whose conclusions are shared by Dr. William Healy. This author states:

"Consideration of the question of the influence of the newspapers in producing anti-social conduct has brought forth results surprising to ourselves. It would seem, *a priori,* that the great amount of material which the newspapers publish relating to delinquency must certainly very definitely harm the readers. Fenton, in his highly interesting study of this matter proceeds from this standpoint. He shows that a very considerable proportion of the news space of the ordinary daily paper is taken up by accounts of criminalistic and

[25] Lombroso, *Op. Cit.,* pp. 54, 55.

[26] Albert Hellwig, "*Die Beziehungen zwischen Schundliteratur, Schundfilms und Verbrechen,*" Gross' *Archiv für Kriminalstatistik,* Vol. 51, and Francis Fenton, "The Influence of Newspaper Presentations upon the Growth of Crime," University of Chicago, 1911.

other anti-social affairs. But when it comes to anything like the proof of this supposed effect in a given case it appears singularly hard to obtain. *General impressions from many sources are readily forthcoming, but no satisfactory exact data, and yet, of course, this does not deny certain eminently bad influences which such literature may have. . . .* We should be inclined to believe that there are good psychological reasons why newspapers do not have anything like the same bad effect as literature of the dime novel order, or as pernicious moving and other pictures. There is ordinarily no glamour whatever about the story of a criminal as told in the papers. He is nearly always a sufferer, being either hunted for or under duress. He is often shown with a haggard face, and his sufferings are recounted. This is altogether different from the history of a bandit as told in cheap novel form. Then the constant crowding of the newspapers with all sorts of ideas can but tend to militate against the influence of any single story. . . . . Perhaps these facts account for the unexpectedly slight proof of bad influence." [27]

104. The Press and the Formation of the Criminal Propensity. Theoretical Data. In estimating the influence of the press upon the formation of the criminal propensity the following general considerations have to be taken into account.

No one single cause ever produces either a crime or any other social phenomenon. Therefore, in ninety-nine cases out of one hundred, we will fail to discern a causative connection beween an individual crime and some specific newspaper article or obscene " dime novel." However, this in itself does not justify the presumption that the sensational press has no bearing upon the aetiology of crime.

Like most of the other socionomic factors — whether constructive or destructive, — the press does not produce immediate results in the sphere of social relationship. Its workings are slow but persistent, and, at times, insidious and subtle, but the ultimate effect is invariably of marked importance. A news item, even though depicting a crime in a rather attractive manner, hardly ever will prompt a person to undertake forthwith the perpetration of a similar crime.

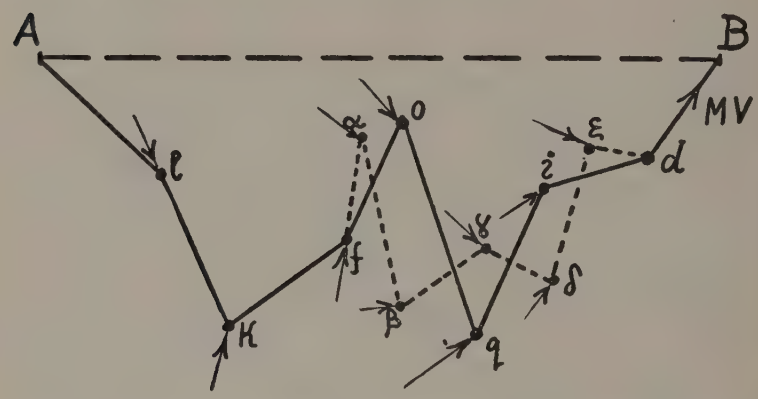
Close inquiry into the psycho-social nature of the criminogenic process divulges the fact that its gradual crystallization

[27] William Healy, A.B., M.D., *Op. Cit.*, pp. 301, 302, 303. Italics ours.

is accompanied by complex oscillations which are due to a number of elements, such as fear, constructive social influences, lack of suitable circumstances for the commission of the particular transgression, different moral considerations and many other psychological impulses. This intricate process, then, does not assume the form of a straight line A–B.

A_____B

A, being the embryonic stage of the delinquent propensity and B, the discharge of the criminal energy. Graphically, the path followed by the mind dwelling upon a specific criminal proposition or scheme can be expressed thus:



As a rule, the formation and growth of the impulse leading to the perpetration of premeditated crimes, comprises two distinct varieties of psychical fluctuations:

a. Originated by the inner collision of social stimuli seeking to overpower the stream of egocentric emotions, and

b. Resulting from practical obstacles arising in connection with the commission of the criminal deed itself.

The first group (*a*), which chronologically precedes the apparition of the second range of fluctuations, properly constitutes the process of the origination of the criminal intent. In our diagram the track of the progress is denoted by the black line, while, l, k, f, o, q, i, d, are intermediary shocks caused by additional discharges from outward excitations, including edu-

cational influences. These stimuli either convey a new impetus to the criminogenic process (upward trend), or, on the contrary, tend to weaken it (downward trend).

As a matter of fact, in the psychology of the professional criminal, the social propensity being virtually nonexistent, the path indicated by the black line should be omitted altogether. His attitude toward law and order, being negative, the *criminogenic disposition* — to use Dr. Adolph Lenz's term (" *kriminogene Neigung* ") — is a fixed psychic state. Therefore, in the case of the habitual delinquent, the oscillations are confined to the dotted line, since the potential criminal *animus* is a fundamental and firmly established attitude of the mind, derived from previous experiences. Here, the whole course of the development resolves itself into a technical problem of removing the material barriers standing between the crystallized criminal intent and its practical realization.

Still, whether we deal with the habitual or casual delinquent, — the criminogenic progress must reach a certain point of maturity which we designate by the mechanical formula mv (energy in discharge), whence the psychic activity assumes a straight upward direction until it is finally transformed into the proposed criminal act.

A casual article relating to criminality, printed in a newspaper, *per se,* is insufficient to incite the individual to violate the law. However, if, day by day, a person is reading a newspaper catering to his lowest and bestial instincts, he finally awakens to the fact that some radical change has taken place in his mental attitude towards the social order. He then feels prepared for a conflict with society, taking for granted that the future collision is likely to benefit him, and, in some way, gratify his egocentric appetite.

The same, of course, is true of pornographic fiction and morbid art, although their influence, as Dr. Healy justly observed, in some cases might be stronger and more directly leading to the materialization of the criminal propensity.[28]

[28] Professor M. Gernet, in his work to which allusion was made previously, correctly observed that all kinds of detective stories, more often than is usually realized, prompt the underaged to imitate the cruel heros' exploits. In some cases which took place in Russia, it was found that offenses committed by

105. The Press and Advertisement of Crime. In analyzing the sinister influence exerted by the daily press, it must be considered that there are many crimes which are seldom, if ever, given attractive publicity by the average newspaper. Consequently, with reference to these particular transgressions the press cannot be regarded as a criminogenic agency, being merely a neutral factor.

For instance, to the author's knowledge, no periodical has ever exalted the " virtues " of pickpocketing or running down children in the streets by motor trucks. So, the attempt itself to ascribe the commission of a crime of this kind to the influence of the press would be an idle proposition.

On the other hand, it is undeniable that there are other categories of crimes, especially political murders, acts of banditry and some sexual outrages which are widely advertised in the daily press, frequently with some sort of inexplicable sensuality.

Anyone familiar with the newspaper campaign conducted throughout Russia, from 1905 to 1907, will readily agree that its criminogenic effect was overwhelming. Unruly mobs swept into the chaos of the wholesale destruction, and engaged in plundering, butchering and raping, were wildly applauded by unscrupulous journalism, and their abominable deeds extolled as acts of civic virtue.

Furthermore, whenever a Russian court sentenced a man for a would-be revolutionary crime, the radical press invariably came out with violent denunciations of the Government, and always sought to attribute to the offender some " heroic motive," portraying him as a martyr for " the sacred cause of liberty and justice."

The press in the United States, with a few exceptions, is conspicuously inclined towards advertising criminal acts of all sorts, more particularly when the crime, as in the Loeb and Leopold case, happens to involve scandalous details. The

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adolescents were the exact re-enactment of crimes depicted in the Sherlock Holmes series. Thus, in Moscow, a landowner received an anonymous letter, demanding, under threat of death, that a certain sum of money be brought to a designated place. The police arrested the young extorter, in whose overcoat was found a detective story which was identical to that which he was about to duplicate in his own contemplated offense; while the letter which he had written was an exact copy of the anonymous letter quoted in the detective novel.

Cleveland Survey of Criminal Justice with good reason devoted considerable attention to this subject and pointed out to the indiscriminating use made of the theory of crime waves. It is interesting to note that, according to the findings of this wisely directed investigation, there seems to be a striking parallelism between the number of crimes committed during a given period and the amount of space allotted in the paper to crime-publicity.

The table below, referring to the month of January 1919, is self-explanatory.

NUMBER OF FELONIES BY WEEKS COMPARED TO NEWS SPACE

Week beginning	*Felonies*	*Inches of News Space*		
		News and *News-Leader*	*Press*	*Plain Dealer* daily & Sunday
January 1.....	153	59	51	107
January 8.....	192	200	236	272
January 15.....	203	1304	1123	1451
January 22.....	160	765	813	1098 [29]

Perhaps the most remarkable feature concerning these instructive figures is the disproportionate increase in news space compared with the increase in the number of crimes. During the week beginning with January 1st, 153 felonies had been committed in Cleveland, as against 203 — during the week starting on January 15th. This is an augmentation of approximately 33%; whereas, in the case of the "News Leader," inches in space devoted to the subject of crime, increased from 59 to 1304, or over 2000%.

Vanity being one of the basic characteristics of the habitual criminal, — publicity is precisely what he is longing for, and in this respect the press often does perform the function of a powerful criminogenic agency.

106. Criminogenic Headlines in the Daily Press. Morbid in-

[29] See Cleveland Survey of Criminal Justice, directed and edited by Roscoe Pound and Felix Frankfurter, pp. 544 and 545, Cleveland, 1922.

stincts can be promoted by journalism, not only in consequence of *what* is being printed (vicious contents) but also due to the *way* an event is reported. In our nervous and rushing age, people oftentimes are, or at least think they are, too busy to read protracted articles; but the public eye quickly catches a headline, especially if accompanied by some sensational picture. *Prima facie,* this is nothing but a mechanical perception.

According to Bergson, "the mechanism of our ordinary knowledge is of a cinematographic kind," [30] constantly taking, as it were, snap-shots of the passing reality. The mind automatically registers an external sensation, and, at first, this "cinematographic" act evokes but little response to the outward excitation. In fact, the impression thus conceived becomes *almost* lost in the stream of other heterogeneous excitations; it submerges in our subconscious mind. But as Dr. E. Fankhauser pointed out, — the accumulation, even though automatical, of analogous impressions, increases the quantity of that substance in our neurons which he calls *sensibilisierende Substanz,* and which forms the chemical foundation of affectibility. This process has been clinically observed in cases of hysteria and the more pronounced forms of insanity.[31]

The first headline perceived, as stated, produces but a casual mental reaction. However, the multiplication of analogous excitations unavoidably produces a conspicuous pathogenic effect.

We shall here faithfully reproduce the headlines, partly with the accompanying texts, of two newspapers having a large

[30] Compare Bergson's *Op. Cit.,* p. 306.

[31] See Dr. E. Fankhauser, "*Über Wesen und Bedeutung der Affektivität, Monographien aus dem Gesamtgebiete der Neurologie and Psychiatrie," Heft* 19, p. 10, Berlin, 1919. He gives a graphic demonstration of the process above referred to, which, although schematic, conveys a precise idea of the mechanism of the chemical changes taking place in our nervous apparatus as a result of the additional excitations penetrating the neurones leading to or connected with the vegetative system. He says: "*Ein geringerer Reiz bringt nun die gleiche affektive Reaktion hervor, ein gleich grosser eine übergrosse. . . . Dies wäre ungefähr das Schema der hysterischen Reaktion.*" English readers will find in E. Boyd Barrett's "The New Psychology" an interesting diagram showing the consecutive influx of impressions emanating from an external object, into the kernel ("greenness") of consciousness through the fields of the ether vibrations, opto-chemical processes, nerve impulses and chemical processes in sensorium.

circulation in greater New York. In both instances they covered the period of one month (May 1926).

May	*Headlines*	*Suggestive of what?*
1.	NOOSE LOOMS FOR CANDY KID	Crime
2.	SWISH! CRACK! SWISH! CRACK! WIFE BEATER GETS MEDICINE. His back bared to waist and cat-o'-nine-tails flying in the hands of Sheriff J. L. Potee, James Kingmore yesterday received five lashes at Baltimore, Md., prison as part punishment for beating his wife. Four women, one of them said she enjoyed it, were part of 200 persons who witnessed lashing. After punishment Kingmore collapsed. "I don't mind taking my medicine, but don't think you should make a circus of it," he said	Cruelty and Crime
2.	'GEE, HOME'S GREAT'—CANDY KID	Crime
	Girl, 6, Fiend's Victim.—Charged with attacking Genevieve Deicinsky, 6, (above with mother in court) Joseph Dinan, 23, was held yesterday in $5,000.00 bail in the Bridge Plaza Court. Playing near Brooklyn home child was lured to cellar by crisp dollar bills. Dinan, paroled on grave charge confessed, police say	Crime and Sexual Perversion
3.	MURDER TRACED IN KIDNAPPING	Crime (Murder)
4.	BRITISH STRIKE STARTS. 2,525,000 Walk Out	Social Warfare
5.	BRITISH POLICE CLUB RIOTERS. Remarks to the picture: "Throw down your arms and join the revolt against the capitalists;" for these supposed remarks to sailors and soldiers, Shapurji Saklatvala (above in impassioned appeal), Communist M. P., was arrested yesterday in London and held in $15,000.00 bail	Social Revolution
6.	THOUSANDS RIOT IN LONDON	Social Warfare
7.	STRIKERS SPURN PEACE EDICT	Social Warfare
8.	MACHINE GUNS COW STRIKERS	Social Warfare
9.	BREAD, ENGLAND'S SPECTER: Picture says: "Every ship to and from London is a scab ship." This and other explosive signs made appearance in Union Square yesterday when Juliet Poyntz, Ben Gitlow and others addressed meeting	Social Warfare
10.	KING SEEKS WAY TO PEACE	Neutral
11.	STRIKE PEACE PLANS OFFERED	Neutral
12.	SECOND PEACE PARLEY FAILS: Picture says: "International" resounding, banners wave, bobbies watchful in Communists' and Laborites' parades two days before strike was called	Social Warfare
13.	HER 'RIVAL' WHIPS DIVORCEE	Scandal and Cruelty
14.	POKER GOT WARD'S $35,000.00	Graft
	Father Brutally Beats Baby	Brutality
15.	FEAR FOR NORGE IN STORM	Neutral
16.	NORGE SAFE, LANDS IN ALASKA	Neutral
17.	SAVE 325 FROM SINKING SHIP	Neutral

	Headlines	*Suggestive of what?*
May		
18.	THREATEN VANDERBILT BABY. — Kidnap Guard for $2,500,000 Baby	Crime
19.	100 WOMEN MOB 5 OFFICERS	Riot
20.	HER LOVE CHOICE. "Other Man" Shoots Woman, Ends Life	Crime and Suicide Scandal
21.	SUBWAY STRIKE VOTED	Labor Troubles
	Friend Carroll Gets His Publicity. Oodles and oodles of it! Jean Downs, actress, helped Earl Carroll along as he was being bathed with it in federal court bathtub case. She asked the Supreme Court here to make Carroll pay her $75,000 because, she says, this picture of her in costume was used over another's name and entirely without her consent. Carroll, Jean asserts, was to blame	Sexual Scandal
22.	CANDY KID GUILTY. He Spits at Prosecutor	Crime
23.	MOTHER BEATS FIEND SUSPECT	Cruelty
	Peaches Likes Herself	Egoism
24.	FATHER KILLS GIRL, ENDS LIFE	Crime, Suicide
25.	MASHER SHOOTS POLICEMAN	Crime
26.	'IN TUB, NUDE AND DRUNK' Joyce Hawley	Sexual Scandal
27.	'EARL CARROLL LIED' Buckner Tells Jury	Sexual Scandal
28.	YOUR PHONE BILL GOING UP	Neutral
	Count Moy's Thorn! — While Count Moy and his bride, the former Pamela Speyer, tour Europe, his former wife, Lina Amsel, whirling wind of the German night clubs, will be touring night clubs here, it was whispered about Broadway yesterday. It has been intimated the newly wed nobleman may cut short his Atlantic City honeymoon to hasten sailing and avoid a possible meeting with his former affinity	Family disruption and Sex Theme
30.	JUDGE CARY'S DRY CZAR QUITS	Neutral
	Girl, 11, Saves Parents. — Fighting her drink crazed brother, John, 19, Eleanor Hewitt, 11, grabbed brother's pistol despite beating and protected parents he threatened to kill. Eleanor is shown telling her adventure to Children's society agent. John was held on Sullivan law and assault charges	Cruelty, Crime (assault)
31.	9 PERISH IN BROOKLYN FIRE	Neutral

	Headlines	*Suggestive of what?*
May		
1.	KIDNAPPED MALUSKI BOY ALIVE	Crime (Kidnapping)
	New Hunt for "Candy Kids" Loot	Crime
3.	BRITAIN FACES LABOR WAR	Social Warfare
	Girl is Held Captive Three Weeks	Crime (Kidnapping)
4.	BRITISH LIBERTIES SUSPENDED	Social Warfare
	$9,500 on Police Desk	Graft
5.	STRIKE SETTLEMENTS LOOK HOPELESS	Social Warfare
6.	WARSHIPS GUARD BRITISH SEAPORTS	Social Warfare
	United States Ships are hampered by Lack of Transport Workers	Labor Troubles

	Headlines	*Suggestive of what?*
May		
	Army Officers Unite to Praise *Girl's Camps* as Sponsor visits Fort	Neutral
7.	RIOTERS HIDE MACHINE GUN	Social Warfare
	Fifty Resorts in Latest Padlock Rum Raid	Social Trouble
8.	POLICE CHARGES RIOTERS IN GLASGOW	Social Warfare
	City Teachers in New Fight for Pay Increase	Neutral
10.	WALTER WARD MISSING: Fear he is Slain	Crime (Murder)
	British Labor Leader is Arrested	Social Warfare
11.	WARD GANG VICTIM, IS FEAR	Crime
	Crucial Hour in British Strike	Social Warfare
12.	BRITISH STRIKE IS OFF	Social Warfare
	Woman is Sought in Ward Case	Crime (Murder)
13.	WALTER WARD SOUGHT IN HOSPITALS	Crime
	Bomb Wreck House, 8 are Injured	Crime and Anarchy
14.	BIG POLISH BATTLE EXPECTED	Political Upheaval
17.	MAN DEAD, GIRL HURT IN 3 RAIDS	Political Upheaval
	New Flight to Pole Starts	Neutral
	Browning Bungalow Burned; Hint Klan Threat	Crime (Arson)
18.	SEND NOEL TO ASYLUM, MOTHER PLEADS	Crime and Insanity
	Cop Killed "Best Friend," is Charge	Crime (Murder)
19.	WETS SWEEP PENNA.	Neutral
	1 Killed, 4 Hurt in Auto Crash	Reckless Driving
20.	$20,000 FIRE NEAR CATHOLIC ASYLUM	Neutral
	PENNA. SLUSH FUND SCANDAL SPURS DEMOCRATS	Scandal and Graft
21.	PLAN TO REVIVE GAS EXECUTION VICTIM	Crime
	I. R. T. Subway Men Vote to Go on Strike	Labor trouble
22.	SLAIN BY GAS, DIED "GAME"	Homicide
	WHITTEMORE PLANS APPEAL	Crime
24.	FATHER KILLS CRIPPLED DAUGHTER	Crime (Murder)
	1 DEAD, SCORE HURT IN N. Y. TRAIN WRECK	Neutral
25.	2,000 MISSING IN JAP DISASTER	Neutral
	Joyce Hawley the Wine Bath Girl, Takes Stand Today To Tell of Plunge	Sexual Scandal
26.	POLICE USE CLUBS TO QUELL PRIZEFIGHT RIOTERS	Social Warfare
	Surprise in Carroll Defense	Sexual Scandal
27.	CARROLL VERDICT DUE TODAY	Sexual Scandal
	Swedish Crown Prince Here	Neutral
	Two Women are Strange Amnesia Victims	Insanity
28.	SWINDLE QUEEN ELUDES POLICE	Crime
	Three Shot, One Dead in East Side Rum Feud	Crime and Social Trouble
	Everybody Smiles as Earl Carroll, Knight of the Bathtub, is found Guilty of Perjury	Sexual Scandal and Crime (Perjury)
29.	YOUTH, 20, TRIES TO KILL SISTER	Crime (Murder)

Now, the daily circulation of the two papers combined, even conservatively estimated, can be put approximately at 1,000,000 copies. Consequently, hundreds of thousands of

people, old and young, are daily subjected to the flood of this sensational propaganda, — a fact which certainly adds to the condition of general excitement and pathological unrest, and *mutatis mutandis,* must facilitate the growth of the egocentric and anti-social instincts.

Here, we selected at random only two newspapers out of the mass of the periodicals published in New York City. But dazzling advertisement of crime and scandal is one of the keynotes of commercialized journalism aiming at increased newspaper circulation by fostering sensationalism in all its ramifications.

Confining the analysis to the United States, it might be justly said that by the mere display of reckless headlines, the attention of the people from coast to coast, is continuously focused on obnoxious happenings and disgraceful events. Nor can it be denied that in many newspapers a scandalous story, on account of its " news value," is given greater prominence than a speech made by the President, an important scientific discovery, or a noteworthy event in the field of art.

107. Advertisement and Criminogenic Impulses. There is another phase of the question which we shall briefly examine. The average periodical is divided into three main sections: (a) news, (b) editorial, and (c) commercial advertisements. From year to year, the importance of the latter columns has been increasing and, no doubt, through them the economic problem of supply and demand is made easier of solution. Nevertheless, in the field of advertisement criminology must take heed of such symptoms as are unmistakably criminogenic.

Below are reproduced verbatim several exhibits of advertisement items taken from only *one* issue of a weekly magazine with a national circulation freely sold at news-stands in New York and elsewhere:

BEAUTIFUL Lonely ladies, maidens, widows, all ages, many rich; copy of correspondence magazine, photos, names and addresses for $1.00. Magazine free. Chicago, Ill.

FREE descriptions, many wealthy, wishing correspondence. Write, Springfield, Ohio.

LONELY MEN AND WOMEN Send for my description of wealthy people who want to correspond. Free.
San Francisco, Calif.

DIRECT FROM FRANCE Books for men. The kind hard to get. New 1926 Catalogue, 10 cents.

BEAUTIFUL Girls — *Wealthy widows* desire correspondents. Introductions, names, addresses and descriptions; big list sealed 25 cents. Strictly confidential.
New York.

GENTLEMEN — Charming widows, beautiful girls, hundreds wealthy, will correspond. Photos, descriptions. 10 cents.
Kansas.[32]

" Ads " similar to those cited and even more " spicy " could be taken at random from many periodicals published in the United States, while some commercial appeals in French magazines are too filthy to be reproduced or alluded to here.

108. The Press and Criminal Investigation. There is an additional remark to be made which may be of practical interest to those engaged in the responsible work of crime detection.

In most countries, it has become a fashion among newspaper men to take an active part in investigating *mysterious* criminal cases. Reporters earnestly seem to believe that they can " do the job " better than the coroner, the official *Untersuchungsrichter* or the prosecuting attorney. Whenever a sensational crime is committed, newspaper reporters virtually plunge into the investigative work. Were their efforts confined to the detection of the criminal deed itself, no serious objection could be raised against such a practice. Unfortunately, however, the reporter not only investigates, but deems it his duty to inform the public about the progress of both his investigation and that conducted by the state. Besides, volunteers, sometimes endowed with fervent imagination, are inclined to invent different theories, " *versions journalières*," as to who the guilty person is.

Newspaper publicity of this kind rarely helps and often hampers, the work of the prosecuting attorney, since it prematurely divulges information which ought to be kept secret. The

[32] This paragraph should be compared with paragraph 121, Chapter VI.

criminal, by merely watching the newspapers, is enabled to follow the course of the official investigation, and in this way he can more efficiently " cover up " his crime, devising different schemes of defense, including the destruction of material evidence, the fabrication of false alibis, and so forth.

Hans Gross devoted much attention to this subject analyzing the difficulties which frequently arise in consequence of the reporters' meddling with the investigation of criminal cases. He warned the magistrates against the danger of disclosing the nature of the evidence in possession of the authorities. He also expressed the opinion that the press sometimes may be used in criminal investigations with some degree of advantage, provided the reporters confine their newspaper writings to such data only as are given to them by the state investigator himself.[33]

In Russia, under the old rules of criminal procedure, the process of investigation was guarded against the intrusion on the part of any outsiders: no one, with the exception of the prosecuting attorney himself, the police and the experts, summoned by the state, had the right to participate in and be present at the investigation, with the result that reporters usually had no conception of the developments of the case.

In the author's own practice, as prosecuting attorney (*Juge d'Instruction*) at St. Petersburg, on several occasions he found it advisable to utilize the press, mainly for the purpose of directing the attention of the fugitive criminal to insignificant events in the investigative work, so as to convey the impression that the authorities are on a wrong track. Such were the tactics used in the notorious case known as the Leshtoukoff Street Murder, when Andrew Guilevich, after having assassinated Podloutzky, managed to escape to Paris with the passport and identification papers of the victim. The ultimate arrest of Guilevich was partly due to the friendly coöperation of the state authorities and the press.

In the way of a general statement it might be said that reporters should not be allowed to come in contact with or to

[33] Dr. Hans Gross, *" Handbuch für Untersuchungsrichter, als System der Kriminalistik,"* Vol. I., pp. 319–325 München, 1908.

receive any information regarding the persons suspected by the prosecuting attorney until the investigation is brought to a successful issue. Naturally, it is beyond the power of the state to prevent newspaper men from conducting independent inquiries; but so long as they have no access to the material evidence in the case and the officially collected data, the chances of disclosing through the press some vital information are quite remote.

Professor R. A. Reiss, is also opposed to the participation of professional journalists in the investigation of sensational crimes. He suggests that, day by day, the police issue bulletins on the progress of the official investigation. This practice has been adopted in Paris and Marseille.[34]

109. Concluding Remarks on the Press. The contention that an individual crime seldom can be traced to the influence of any single news item, — is quite correct. On this point we are in full accord with Dr. Healy.

From the standpoint of criminology, however, the principal danger of perverted publicity is its *ultimate* demoralizing effect upon social psychology. Examined from this angle, indiscriminate journalism unquestionably occupies a prominent place among the factors which either cause or encourage the growth of the criminal propensity leading to the crystallization of the "*milieu criminel.*"

In all justice to the press, it must be stated that in most countries, including the United States, there are many newspapers and periodicals in general, which render valuable services to the community. Indeed, it is mainly through the apparatus of the press that national sentiment in this country has been at last aroused against lawlessness and professional criminality. Equally, the educational influence exerted by the self-respecting press upon its readers, on the whole, is sober and constructive. Newspapers of the better class bring to the minds of the masses a large number of facts worth while remembering, and which, without the press, would have remained unknown to and lost for the majority of the nation.

The witty epigram of Oscar Wilde: "*Journalism is unread-*

[34] See R. A. Reiss, *Op. Cit.*, p. 353.

able and literature is unread," is true only to the extent that literature is not read. Shakespeare, Milton, Byron, Pope, Dickens, Rossetti, Shelley and Keats are hopelessly forgotten by the public, and they lie there, on the library shelves, covered with the dust of neglect.

But journalism is steadily growing more serious, also, perhaps, less biased, and because of its proximity to the people and the popular price of the magazines, it has become an important agency in the domain of social education.

110. Literature and Art in Their Relation to Criminality. These general remarks on the criminogenic significance of the press are likewise applicable to literature and art, whose educational value and socionomic meaning may be — and often is — constructive, uplifting and profound. Verily, most of the honorable traditions, like golden sentences carved into the stone-tables of world culture, are derived from man's sublime achievements in the realms of harmony and learning.

Cast into the treasury of human thought, these great ideals and words of truth, out of the very depth of their seclusion, continue to illuminate the mysterious paths pursued by mankind in its elemental longing for wisdom and perfection.

Yet, the saying is true: nothing is too foolish for the wise man and nothing too wise for the fool. Hence nearly every constructive proposition can be perverted and turned into a weapon of destruction.

In our day, decadence of literature is a fact which can hardly be disputed. Silly and distasteful fiction flooding the international book market, thousands of meaningless volumes yearly thrown into the bottomless gulf of oblivion, — are systematically lowering the public taste and undermining all aesthetic standards. Nevertheless, the interest of criminology in this kind of literature is remote since the " dime novel " is not necessarily vicious and often contains no criminogenic elements at all.

However, there is another type of literary production which has a direct bearing upon the formation of the delinquent instinct, namely, the so-called sexual novels and dramas.

111. " Collective Exhibitionism " in Literature and Art. Beginning with Wedekind's " Awakening of the Spring " and

Linkeus' " Mother " as well as other stories, sexual fiction suddenly became a fashionable affair, first in Germany and later in France, Russia and other European countries. Such novels as *" Notre Dame de Lesbos," " Sanin," " La Garçonne," " Aphrodite," " Mémoires d'une Masseuse,"* and innumerable books of the same order, accompanied by a corresponding number of poetical compositions glorifying the principle of the sex *Libido,* marked a whole epoch in both the history of world literature and the social psychology of the masses.

At present, the sexual thesis, especially in its perverted sense, is more than a dominant subject in modern thought; it has assumed the proportions of a mob, or mass-psychosis. The formula of sex is introduced everywhere and set forth in justification of everything. The moral deterioration prevailing among the younger generations, sometimes termed as " revolt of youth," according to some writers is also caused by the *Libido.*

Thus, Henry Knight Miller, writing in the monthly magazine " Sex," stated as follows:

" Signs of this great movement are to be found in the revolt of youth against the taboos of the elders, the jazz flappers, the hip-pocket-flask cake-eaters, blundering, foolish, reckless but determined, experimenting, defying old superstitions, building new standards, ideals and conventions.

Other signs of the great *social emancipation* are the scantiness of woman's dress, the frank and unblushing display of the human body, bathing in practical nudity at all the beaches, the display of absolutely nude girls in current Broadway reviews, sex plays, novels and movies, freer and more frequent divorce, and almost open indulgence of extra-marital relationship among vast groups of the population.

All this presages social gain, provided the freer conventions which the new order establishes are sane and the rising tide does not lead to excess.

Any excess is bad. Eating is a good and necessary activity. But unbridled and excessive indulgence in satisfying the hunger instinct leads to disease and death.

The reproductive instinct is an insistent urge of life. It needs to be fulfilled if life is to be fully and completely experienced.

But excessive gratification and unbridled indulgence bring heavy penalties.

We must rationalize sex, get a sense of perspective, discard fear, shame, silence, false modesty, sublimate, express, but relegate the impulse to its proper and proportionate place in life and balance its expression with a vast world of constructive interests and activities which will make life rich, beautiful, expansive and triumphant." [35]

The success of sexual literature on both sides of the Atlantic is overwhelming. The English version of *"Sanin"* has had an immense sale in the United States. *"La Garçonne"* recently celebrated its *two hundredth* edition. Homo-sexual corruption, lesbian love, sadistic acts, different adventures of masochism and kindred subjects, are brought to the foreground, twisted in ten thousand different ways, and savored by both the sexual writers and their underaged readers, boys and girls alike.

Sexual stimuli are contagious and singularly adapted to imitation. In Russia, for instance, the pathogenic influence of *"Sanin"* took the form of a collective psychosis among school children who started organizing secret societies in which abnormal sexual relations were freely practiced.

Krafft-Ebing, speaking of offenses against morality, stated:

"In man's present condition of civilization, modesty is a characteristic and motive so firmly fixed by centuries of education that presumption of a psycho-pathological element necessarily arises when *public* decency is coarsely offended. The presumption is justifiable that an individual who has in this way offended public decency and his own self-respect was incapable of (idiots) or had lost the feelings of morality (states of acquired mental weakness); or that he acted while in a clouded state of consciousness (transitory insanity states of partial consciousness)." [36]

The literary behavior of the pleiad of sexual writers, indeed, is *collective exhibitionism* constituting an offense against public morality, and inciting the mentally underdeveloped to participate in the orgiastic feast.

[35] September issue 1926, p. 12. For obvious reasons we refrain from quoting *in extenso* some of the more striking passages encountered in the different "breezy," "snappy," "droll" and "frolicsome" stories.

[36] *Op. Cit.*, pp. 504, 505.

Of course, from the standpoint of criminology, there is no difference between an obscene novel and a nude or semi-draped theatrical performance, which suggests to the weak-minded nothing but sexual license and perversion.

Some times, like in the notorious case of Vadim Krovianik (Vadim "the Bloody"), the Russian sexual murderer, it is possible to establish a causative link between the perpetrated crime and the particular book which acted as the catalytic element in the formation of the delinquent impulse. More often, however, no such connection can be detected, and still, the criminogenic character of sexual literature and art is beyond doubt.

These observations are all the more important as criminological surveys furnish abundant proof that there is a close, almost organic, affinity between criminality and sexual perversions.[37] To what extent criminalistic ideas are affiliated with the whole range of sexual perversions can be demonstrated by the tattooed designs on the bodies of prison inmates, as well as the pornographic inscriptions and sexual burlesques scratched on the walls of prison cells and toilet rooms.

The psycho-pathological elements of the sexual phase of criminality will be discussed elsewhere. Here, we merely sought to indicate the measure in which perverted education, viewed from its broad sociological aspect, can act as an excitant fostering morbid tendencies. The scope of this particular phase of criminology is almost unlimited: virtually every social event or factor, by reason of its widespread influence upon the community, may acquire an educational value — whether positive or negative — suggesting a new line of investigation of the process generating delinquent phenomena.

To cite but few examples: so-called "cubistic," or "futuristic" art, ostensibly stands in no relation to the subject of criminology; nevertheless, in studying the emotional effect of

[37] On this subject very valuable information will be found in Reiss' "*Manuel de Police Scientifique*," in chapter "*Souteneurs et Prostituées*," Lacassagne's "*Le Sadisme et les Crimes Sadiques*," in the manual "*Précis de Médecine Légale*," by Lacassagne and Martin (p. 624), and also in Havelock Ellis' "The Criminal," (pp. 425–427 and pp. 134, 139, 196, 200, 265, 268).

the principle of *disharmony* in art (sculpture, music, architecture, painting, poetry), it would not be difficult to detect the pathogenic nature of cubism which is diametrically opposed to the harmonic instinct and prominently interferes with that functional property of the political organism which we called " the social rhythm."

If we were to carry our analysis a step further by endeavoring to find the place of futuristic creation among the factors intensifying social friction, we would probably become convinced that this form of artistic perversion is of deep interest to criminalistic research.

Much in the same way, anarchism — another variety of " social " education — despite its obvious political character, has a strong bearing upon the aetiology of crime, and hence, — the necessity of examining it in relation to the mechanism of the anti-social springs of actions. (See Chapter II.)

We have refrained from emphasizing the role of the moving pictures in the process of the growth of delinquent impulses, because the nature of the excitations produced by the film is analogous to that generated by the reading of an obscene novel. Between the two categories of excitations there is but a quantitative distinction.

Generally speaking, the criminologist, in the course of his analysis, must dissect and scrutinize every socionomic factor in the same way as a histologist, in his laboratory, examines under a microscope the delicate make of vegetable tissues determining their chemical composition. The deeper we dig into the layers of the social order, tracing their mutual correlation, — the more it is likely that some day — perhaps in the remote future — science shall reach the very root of the criminal propensity. Above all, the student has to be guarded against the tendency to interpret the complicated phenomenon of crime by any single cause, no matter whether social or psychophysical.

Neither logic nor philosophy can justify such an attempt. Only simplified science — but is it science after all? — can hope to make progress by mechanically reducing the number of ingredients entering into the structure of society. The elim-

ination of some constituent elements of a phenomenon never serves to explain its nature; it narrows the scope of human knowledge, and ultimately destroys the pioneering faculty of the mind which prompts us to extend scientific inquiry to the vast fields of things knowable, but still unexplored.

CHAPTER VI. — CRIME, ITS RELATION TO LEGISLATION AND PROCEDURE

112. Sociology and the Principle of Biological Variations. 113. Criminogenic Nature of Revolutionary Changes. 114. Revolution and Mob Action. 115. Criminogenic Nature of Inadequate Legislation. General Considerations. 116. Growth of Criminality Resulting from Inadequate Legislation. Germany, Soviet Russia. 117. Inadequate Legislation in the United States — Eighteenth Amendment. 118. Bribery and Inadequate Legislation. 119. Criminogenic Effect of Undue Government Interference with Individual Activities. 120. Absence of Adequate Legislation. 121. Absence of Adequate Legislation on the Sale of Firearms. 122. Practical Suggestions on the Regulation of the Sale of Firearms. 123. Criminality and the System of Punishment. 124. Capital Punishment and Crime Ratio. 125. Crime and Impunity. 126. Impunity and the Technique of Criminal Investigation. 127. Unproductiveness of Criminal Investigation in the United States. 128. Oral Evidence and Its Place in Criminal Investigation. 129. Misleading Testimony, — Intentional, Unintentional. 130. Causes of Unintentional False Testimony. 131. Oral Evidence and Material Evidence. 132. Institute of Scientific Criminology. Its Practical Significance. 133. Institute of Scientific Criminology, Scheme of its Organization.

112. Sociology and the Principle of Biological Variations. Spencer's conception of society as a "social organism," like many other speculations of his synthetic philosophy, is no longer held true by modern science. Society is discrete and not concrete; being primarily a psychical union and not possessing the propriety of material unity, indeed, it should not be considered an organism in the sense physiology, for instance, employs this term. Nevertheless, the examination of social phenomena — in both their static and dynamic aspects — without taking into account the fundamental laws governing organic existence, is neither complete nor correct.

Because sociology deals with the broad principles of *social life,* it cannot dwell apart from biology seeking to determine the origin and nature of those forces which produce and perpetuate *life in general.*

Similarly, criminology — which is but a department of sociology — can hardly expect to solve its own problems, if it fails to consider the methods of inquiry successfully used in other spheres of human knowledge. This is all the more im-

portant, as the actuality of crime, like the double-headed Janus, comprises two generic symptoms: — the *social* making delinquency a constituent part of society itself, and the *psycho-physical,* bringing back the offense to the person of the delinquent, whose ego becomes the center of a psychic storm leading to the ultimate discharge of anti-social energy in the form of crime. These two ramifications of criminality are so closely allied to each other that the analysis of one necessarily entails the investigation of the other.

In biology it is a firmly established notion that every cause producing a modification originates on the part of the organism a reaction tending to oppose or counteract the variation thus sustained.

Consequently, in organic life every radical or sudden change is equivalent to a pathological state, which is but a paraphrase of Rudolf Virchow's well known words: *" krank sein ist leben unter veränderten Bedingungen."* [1]

This theory, as elaborated by Professor Korshinsky of St. Petersburg, suggests a more precise formula that can be expressed as follows:

Every variation begins with a period of perturbation, more or less protracted and profound, constituting a crisis, the effect of which the organism seeks to overcome by restoring the equilibrium.

It would be an error to think that this faculty contradicts in any respect the evolutionary principles properly conceived, since evolution is not a mere accumulation of changes but the sum total of changes *plus* reactions against the given variations.

Lamarck, in his *" La Philosophie Zoologique "* (1809), was the first to lay down the law according to which living beings are simultaneously acting mechanisms and constructors of their own mechanisms.

Owing to this condition, the function itself, combined with the results derived therefrom, generates new modes of living which, in turn, being subjected to different excitations, yield new reactive responses, and thus *ad infinitum.*

In other words, if the original state of the individual or-

[1] " To be ill means to live under altered circumstances."

ganism be "*o*," the change sustained by it, — "*x*," and the new state, caused by the change, — "*n*," then we would have:

$$o + x = n.$$

Were we to entertain the fallacious idea that the reaction to a change is nothing but — x, it would be necessary to conclude that:

$$n - x = o.$$

From the point of view of biology this would be altogether incorrect, because the organism seeking to retrieve its balance, lost in consequence of a modification having taken place, *never* succeeds in *exactly* reproducing the mode of being that existed prior to the intervention of the specific variation. The mere intrusion of " x " deranges the constitution of the body which, despite its anabolic faculty, is unable to regain the primary position " o."

In this way, the reaction is not a rudimentary act of elimination of " x," but a process to which a new element " e " — has been added. The two equations, then, can be expressed:

Change.....$o + x = n$
Functional Result of Reaction....$n(-x + e) = o + e,$

where " e," is the new element representing the *evolutive* change entering into the process of life.

113. Criminogenic Nature of Revolutionary Changes. In the field of social phenomena we observe a similar situation. It has been explained elsewhere that society, in its motion, generates certain rhythms which affect both the community, as a body, and its individual ingredients. The condition having been once attained, the social group adheres, more or less automatically, to the rhythmical principle, planning its activities accordingly, building up its habits and moulding its behavior. In society, as in the case of the organism, a radical deflexion from the assumed course, interfering with rhythmo-dynamics, is followed by the tendency to restore the equilibrium, in order that the social entity may pursue the original direction of its motion.

But here, too, the reaction is not a mere substraction of the

change " x," since the social order, even though possessing the reproductive faculty, is incapable of reinstating in all minuteness the *modus vivendi* which existed before the occurrence of the modification. Something new has been added to the former political organization, — that often indiscernable " e " which actually constitutes the element of social transformation.

In this general scheme the attention of criminology is drawn primarily to the fact that the social rhythm, being subjected to sudden variations, society itself undergoes a series of pathological experiences, which, in their conjuncture, may bring forth an all-embracing crisis.

The cataclysmic shocks resulting from revolutionary upheavals, according to Professor Sorokin, are accompanied by the following symptoms of disintegration:

1. Revolution causes marked deviations in both the social conduct and psychology of a nation;
2. Revolution signifies a change in the biological make-up of the population, powerfully affecting the reproductive and selective processes in its midst;
3. Revolution results in the destruction of social morphology, and
4. Revolution causes a general derangement in the functions of the infected community.[2]

In addition, by the mere destruction of the rhythmical property and the mechanical displacement of human multitudes (civil wars, unproductive migrations of the population, emigration, and so forth), revolutionary epochs tend to increase the volume of social friction between the political entity undergoing the process of disintegration, and the individual members involved in and directly affected by the pathological changes. With the complete extinction of all motives of self-restraint, the egocentric impulses, deeply planted in human nature, are allowed to develop unhampered. Thus, the delinquent *propensity,* encountering no obstacles on the path of its growth, is easily converted into criminal *reality.*

114. Revolution and Mob Action. It is also noteworthy that the revolutionary practice is closely affiliated with the phenom-

[2] Compare Professor P. Sorokin's *Op. Cit.,* p. 11.

enon of mob-action. Indeed, the chaotic demolition of the legal foundations, upon which a social edifice had been erected, is always carried out by the masses brought together by some strong suggestion or propelling instigation.

The moment, however, a mob comes to the realization of its physical power, it begins to mistake the mechanical fact of force for the idea of law. It sweeps onward, mercilessly crushing in its mad rush all obstacles, whether political or social, until its disintegrative energy is exhausted.

From a strictly technical standpoint, it may be doubted whether such elemental activities can be classed as criminal. Perhaps Le Bon was right when he stated:

> "Certain acts of crowds are assuredly criminal, if considered merely in themselves, but criminal in that case in the same way as the act of a tiger devouring a Hindoo, after allowing its young to maul him for their amusement." [3]

Still, whatever the formal interpretation of the acts committed by a mob may be, their criminogenic effect upon the individual mind is obvious, especially if their contagious character is taken into consideration. The repudiation of law grows so general that *legalized lawlessness* becomes not only a *de facto* condition, but a law in itself.

115. Criminogenic Nature of Inadequate Legislation. General Considerations. This, of course, is an extreme case of political decomposition. But even in normal circumstances the social rhythm can be seriously disturbed as a result of the intrusion of many factors, and more particularly — by inadequate legislation.

The function of law, as we know, is to control the coördination of the heterogeneous social efforts, thus performing the role of a resultant inter-agent. Wise legislation lubricates the natural state of social friction by diminishing the number of collisions between the different striving groups within the political order, and the individuals among themselves.

On the other hand, if, for any reason, the laws themselves stand in conflict with the desires, customs, ideals and tendencies

[3] Le Bon, "The Crowd," p. 183. 14th Ed., London, 1922.

of a large number of citizens, then the natural condition of social friction is intensified, instead of being decreased, and, again, the rhythmical propriety of the community becomes directly menaced.

A law which prohibits and makes punishable a deed morally repulsive, containing an element of danger to the community, is easily put into effect because it has, as a rule, the backing of the whole nation; the prohibited act in this sense becomes a "*mala in se.*" But a statute interdicting a practice which, *in se,* is not immoral, and, consequently, does not shock social conscience, is not likely to enlist active support on the part of the community in its enforcement.

Friction and diversion of opinion regarding public matters are not only legitimate but natural conditions which are essential to social progress. The mere fact that a certain portion of the social group does not favor a state of affairs, which, in itself, bears nothing wicked or unjust, is insufficient to vindicate the intervention of the government and the inauguration or prohibitive statutes. Vague and evasive as the agency of public opinion may be, its influence upon social morphology is undeniable: if there be real need for adjustment, it will be gradually achieved without setting in motion the cumbersome apparatus of state enforcement.

An enactment which irritates or is opposed by the people, is liable to cause reaction aiming at the repeal of the defective bill. Public resentment to such legislation, forcibly or cunningly wrought upon a nation, usually assumes three different courses:

a. Orderly agitation favoring the repudiation of the particular law;
b. Evasion of its consequences; and
c. Its direct violation.

While the first form of opposition is not criminogenic, *in se,* it sometimes provokes reprisals on the part of the state, and then it is not so much the agitation itself, as the measures of repression, that create an atmosphere of morbid excitement always breeding crime.

116. Growth of Criminality Resulting from Inadequate Legislation. Germany, Soviet Russia. The marked increase of the number of crimes committed in Germany for the period of 10 years, between 1882 and 1892, is unquestionably, in part, at least, due to the parallel operation of two sets of rather unpopular exclusive laws; against Roman Catholicism, on the one hand (1876), and against the Socialists, on the other hand (1878). The growing tide of criminality was especially noticeable with regard to juvenile offenses. This is illustrated by the table below:

GERMANY, 1882 and 1892

Offenses	*Number of Convicted to 100,000 of the Juvenile Population (12–18 years)*	
	1882	1892
Crimes in general	568	729
Theft and Embezzlement	370	430
Assaults	63	108
Malicious Mischief	31	40
Fraud	20	31
Insults	10	17
Rape, etc.	12	14
Domiciliary trespass	7	12
Forgery	5	10
Rebellion	4	5 [4]

Much in the same way, the staggering increase of criminality in Soviet Russia during 1921 and 1922 was due to many different reasons, but primarily to two factors: the all-Russian famine (economic symptom) and intense religious and political persecution (political symptom), which culminated in the promulgation of the Soviet decree ordering the confiscation of church treasures, further expansion of the authority of the G.P.U. (Cheka, or the Chief Political Department) and a series of uprisings against oppressive legislative measures and the red terror.

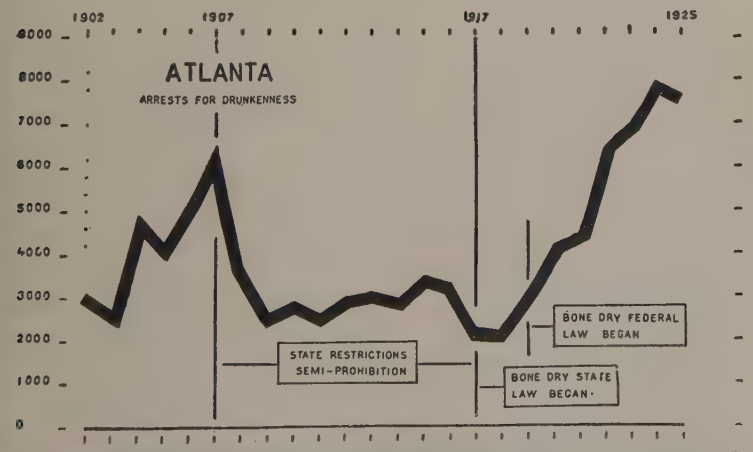
[4] *See, "Kriminalstatistik für das Jahr 1896. Erläuterungen,"* Vol. I, pp. 22, 23. Borrowed from Bonger, *Op. Cit.*, p. 409.

In countries with democratic governments, the state, as a rule, refrains from interfering with orderly propaganda directed against some particular unpopular bill. Nevertheless, the reaction of society against inadequate legislation inevitably exerts a criminogenic influence, leading to attempts of evasion of the defective law (passive resistance) and to its violation by means of deliberate transgressions (active resistance).

Furthermore, in democracies, which, in principle, are the antithesis of the *Polizeistaat,* vexatious legislation has a more direct and powerful effect upon the formation of criminal impulses than in autocratic states, where people are less accustomed to self-government.

117. Inadequate Legislation in the United States — Eighteenth Amendment. In this connection, various experiments with prohibition in the United States furnish many instructive data.

In 1908, Georgia adopted what is known as " state-wide prohibition " which made unlawful the manufacture and sale of intoxicants, but did not forbid importation of alcoholic beverages for personal use. In 1917, that State enacted the so called " bone-dry " law. The immediate reaction to this legislative change is demonstrated by the following diagram [5] showing the number of arrests for drunkenness in Atlanta, Ga., covering the period of 1902 (prior to restrictive legislation) to 1925.



[5] Reproduced with the consent of the Moderation League, Inc., from Stanley Shirk's National Survey, " Conditions under Prohibition," p. 7, New York, 1926.

Stanley Shirk, in his resumé on the influence of prohibition upon drunkenness, stated:

"From the cases of Atlanta, Birmingham and other cities . . . it appears to have been the experience that moderate restrictive legislation resulted in greater practical temperance, while the present bone-dry Volstead Act has been followed by steadily increasing drunkenness. . . .

The Metropolitan Life Insurance Company's death rate from alcoholism among its seventeen million industrial policyholders, usually a trustworthy barometer, shows that for the first half of 1926 drunkenness increased 20% above the same period in 1925." [6]

Another indication of the same pathogenic effect of prohibition is given in the survey of arrests of drunken drivers in the year 1925 as compared with 1919, — the last wet year. Here are the figures for 20 cities.

	Increase
Akron, O.	248%
Atlanta, Ga.	91%
Baltimore, Md.	96%
Boston, Mass.	383%
Chicago, Ill.	476%
Detroit, Mich.*	50%
Duluth, Minn.	457%
Hartford, Conn.	614%
Milwaukee, Wis.	3209%
Minneapolis, Minn.	1054%
New Haven, Conn.	753%
Newton, Mass.	185%
New York, N. Y.	481%
Portland, Ore.*	148%
Providence, R. I.	283%
Spokane, Wash.*	413%
Springfield, Mass.	363%
Trenton, N. J.	331%
Washington, D. C.*	383%
Worcester, Mass.	408% [7]

* Had State Prohibition before 1919.

[6] *Op. Cit.*, p. 7.

[7] *Op. Cit.*, p. 9.

According to the report of the Crime Survey Committee of Philadelphia, the commitments to the Philadelphia House of Correction for drunkenness for the years 1918–22 were as follows:

1918	528
1919	225
1920	46
1921	98
1922	257

Commenting on the Report, *The Journal of Criminal Law and Criminology* stated:

"The figures of the Police Department might have been appended. They show that the arrests for drunkenness per 100,000 population are now almost as numerous as in 1914. The police records also show that the arrests are now considerably more numerous than in 1917, and more than double what they were in 1920, when for a short time prohibition was taken seriously. In 1895 the arrests for drunkenness per 100,000 were 2400.02; in 1914 they had risen to 3089.0. In 1920 they fell to 1120.9; in 1925 they had risen to 2961.4, at least 500 more than in 1895." [8]

These figures are self-explanatory.

However, the most alarming feature of National Prohibition seems to be the impetuous spread of intoxication among American children. In the judgement of criminology, this condition is all the more disturbing as the psychic constitution of the adolescent is weak; it comprises a large number of non-social impulses and egocentric urges, while at the same time, motives of self-restraint play a limited role in the social conduct of the underaged. Consequently, the state of inebriety which, as a rule, intensifies the anti-social emotion, encourages, especially among children, mischief of all kind. The Russian saying that "the ocean is but knee-deep to a drunken man" is all the more applicable to a drunken child, whose social propensity, if at all existent, is in an embryonic state.

[8] *Journal of Criminal Law and Criminology*, Vol. XVIII, No. 2, August 1926, pp. 313, 314.

The Attorney General of South Dakota is fully justified in making this statement:

" There is a strange psychology about this liquor problem that makes it doubly significant. It is beginning to affect a different type of person than it did before. Now it is the youngster of the family of means who is toting the bottle. They think it smart to have a bottle on the hip and the girls encourage the boys to do it. And they rush about in cars. It is one of the most menacing phases of the whole situation." [9]

118. Bribery and Inadequate Legislation. Whether it be the Volstead Act or the Anti-Tobacco Bill, or any other unpopular law, it is bound to generate and accelerate the sweeping growth of graft among those in whom the task of its enforcement is vested.

According to the American conception of bribery, it is not only the officer who receives or agrees to receive a bribe, but also the person who gives or offers, or causes to be given, a bribe or any money, property, or value of any kind, with the intent to influence the former in respect to any act, decision, vote or other proceeding, or in any way neglect or violate any official duty, — is punishable by imprisonment for not more than ten years, or by fine of not more than five thousand dollars, or both. (Sect. 378 of the Penal Law of the State of New York, also Sects. 1823, 1829 and 1830 of the same Law).[10]

[9] " Conditions Under Prohibition," p. 12.

[10] In fact this is a standard definition of graft encountered virtually in every penal code. Thus, §§ 177 and 179 of the French *Code Pénal,* in part, read as follows:

Art. 177 " Tout fonctionnaire public de l'ordre administratif ou judiciaire, tout agent ou préposé d'une administration publique, qui aura agréé des offres ou promesses, ou reçu des dons ou présents, pour faire un acte de sa fonction ou de son emploi, *même juste,* mais non sujet à salaire, sera puni de la dégradation civique, et condamné à une amende double de la valeur des promesses agréées ou des choses reçues, sans que ladite amende puisse être inférieure à 200 francs."

Art. 179 " Quiconque aura contraint ou tenté de contraindre, par voies de fait ou menaces, corrompu ou tenté de corrompre par promesses, offres, dons ou présents, l'une des personnes de la qualite exprimée en l'article 177, pour obtenir, soit une opinion favorable, soit des procès-verbaux, états, certificats ou estimations contraires à la vérité, soit des places, emplois, adjudications, entreprises ou autre bénéfices quelconques, soit tout autre acte du ministère du fonctionnaire, agent ou préposé, soit enfin l'abstention d'un acte qui rentrait dans l'exercice de ses devoirs, sera puni des mêmes peines que la personne corrompue."

On the basis of our theory of crime, as the functional result of excessive social friction, criminology cannot remain indifferent to any legislative enactment which either interferes with personal liberty of the individual citizen, or tends to increase the sum total of social collisions, thus intensifying inner dissension, causing grave permutation in the rhythmo-dynamics of the state and promoting public vice and corruption. Nor does the formal legality of any cumbersome statute make it adequate, for, as President Calvin Coolidge aptly put it:

"In a Republic the law reflects rather than makes the standard of conduct. The attempt to dragoon the body when the need is to convince the soul will end only in revolt." [11]

119. Criminogenic Effect of Undue Government Interference with Individual Activities. Government meddling with private affairs is always a dangerous policy. No state in the world is capable of regulating every manifestation of public taste or individual inclinations. General standards of morality and social manners *cannot be* radically changed or lifted by the passage of prohibitive laws. In fact, the law-making epidemic is a social calamity, especially when the state undertakes to prevent such activities as do not interfere with the safety and comfort of the people as a whole.

In most parliamentary countries there seems to be a firmly planted belief in the minds of the legislators that unless they produce new laws in an everincreasing ratio, they might be accused of neglecting their duties. This is but one of the many manifestations of social pathology in modern states. New laws are manufactured by the wholesale, so that it becomes impossible for either the public or the legislators themselves to find their way through the maze of all kinds of prohibitive statutes, restrictive regulations, and innumerable ordinances. The result of this epidemic of law-making is, and cannot be other than, an epidemic of law-breaking.

Such an interpretation of bribery is logical inasmuch as to the consummation of the crime the concurrence of two criminal wills is requisite, both subjects — he who offers and he who accepts the bribe — being accomplices in the same transgression.

[11] President Coolidge's Address to the American Bar Association, August 10, 1922.

Let us examine a hypothetical instance: In May 1913, Professor R. A. Reiss, addressing the International Congress of Sporting Psychology and Physiology, demonstrated the morbid effect of boxing upon public morality, connecting this *an und für sich* innocent practice with the question of the aetiology of crime. He pointed to the fact that boxing bouts tend to foster brutal instincts, and, in this way, may have a direct or indirect influence upon the formation of the criminal propensity. He said:

" Boxing is a method of defense, and a very good method, too; on this ground I fully approve of it being taught and practiced by the young men. But let us not exhibit it. I believe I was able to prove to you that this is a dangerous thing for public morality and that it entails a grave risk of making your youth even more brutal than it actually is." [12]

Now, taking this theory for granted, it is quite conceivable that a group of citizens, in any given country, might decide to form an " Anti-Boxing League." With funds at its disposal, no doubt, this body would succeed in starting an agitation favoring the abolition of public matches of this sort. Such a movement would be perfectly legitimate and, perhaps, praiseworthy. However, if through its political influence or by means of corrupting legislature, the League should prove capable of forcing upon the nation a series of punitive measures prohibiting the particular sport, popular resentment would be so intense that its anti-social consequences would be much stronger than the potential morbid impression produced upon a crowd witnessing a fist-bout.

The theory of democratic government is founded upon three vital principles:

a. The faith in the sound judgment and good will of the majority of the people,

b. Their ability to govern themselves, and

c. Their determination to abide by the laws created by themselves.

[12] See Professor R. A. Reiss, *" Le Sport et le Crime," Archives d'Anthropologie Criminelle,* Vol. 29, 1914, p. 504.

A government which through legislation attempts to teach the people how much they should eat, when and what they should drink, what they should or should not wear, and why they should not smoke — deliberately repudiates the practice of self-government, substituting it by the reactionary mediaeval *Polizeistaat*.

Whether a monarchy or a republic, government policy of this kind is equivalent to tyranny against which the people are bound to rise, sooner or later.

In this sense, the criminogenic effect of meddlesome and profusive legislation is self-evident: the more police laws, searches and coercive measures, — the more law-breakers the state is artificially breeding.

120. Absence of Adequate Legislation. Quite different is the situation when the exercise of individual rights threatens the welfare of the rest of the community. It then becomes the duty of the state to restrain the dangerous practice by respective legislation, while the absence of protective laws unavoidably promotes the growth of some specific crime.

What in every particular instance the need for restrictive statutes might be, is largely a question of fact. Thus, in Russia, the free sale of strychnine, used in days gone by for the killing of foxes, resulted in frequent murders, perpetrated mainly by peasant women who poisoned their rivals by the deadly substance. In some remote rural regions this horrible custom became so widespread that the government found it necessary temporarily to prohibit the sale of this poison without special medical permits.[13]

An analogous condition arose in St. Petersburg in relation to unrestricted marketing of acetic acid with which ineradicable bodily mutilations were inflicted. This, too, was a typical feminine crime.

[13] In passing, it might be noted that the practice of poisoning seems to be a conspicuously feminine crime. The author conducted about twenty-five investigations of murders by poisoning: virtually in every case a woman played an important part in the perpetration of the crime. It will be recalled that most of the famous poisoners of the Middle Ages and in modern times happened to be women. To cite but a few names: Marguerite d'Aubray, Marquise de Brinvilliers (1630–1676), Countess de Soissons, Dutchess du Bouillon, Mme. La Farge (1840), Marie Cappelle, Mme. Lacoste, Helen Jegado, Van der Linden, etc. On this subject consult J. Ogier & E. Kohn-Abrest, "*Traité de Chimie Toxicologique*," pp. 6–16, Vol. I, Paris, 1926 (Second Ed.).

In the United States these special criminal practices seem to be unknown, or, at least, seldom resorted to; for this reason, the legislature is justified in paying little or no attention to the commercial usage and modes of marketing of either strychnine or acetic acid.

121. Absence of Adequate Legislation on the Sale of Firearms. It is a commonly acknowledged fact that a large percentage of murders in this country is perpetrated by the employment of firearms. The standard "hold-up" invariably begins with shooting, or at least, a threat to use the gun. The slightest attempt on the part of the victim to disobey the bandit's order is automatically followed by the discharge of his weapon. The pistol is just as indispensable an object of the robber's equipment, as the wimble, nippers and the hydric oxide blow-pipe are the habitual requisites of the modern burglar.

Unfortunately the acquisition of firearms is an easy affair in America. Even in those States where restrictions have been put on the sale of revolvers and different guns, the "crook" always finds more than one way of evading the law. He is greatly assisted in his task by the unscrupulous advertising of mail-order-schemes for the purchase of these weapons.

On this subject Frederick Hoffman undertook most instructive comparative statistical surveys which he sums up as follows:

"The outstanding fact of our deplorable murder situation is the large proportion of homicides by means of firearms. In 1920, out of 5,815 murders, 4,178, or 71.8 per cent., were committed by shooting the victim. In England, out of 241 murders in 1923, only 25, or 10.4 per cent., were the result of shooting. This is indeed an extraordinary contrast which challenges attention and calls for drastic action in the direction of suppression and state control. The fact of course must not be overlooked that the Census Mortality data apply only to about 85 per cent. of the total population of the whole country.

For Australia the proportion of deaths from homicide by firearms was only 17 per cent., although social conditions are much the same as in our own country. In Japan, to the low homicide rate of which I have drawn attention, the number of deaths from firearms was only 6, or 1.3 per cent., out of 461 deaths. The reasons for this contrast are known to all. Firearms in this country are obtainable by almost

any one, and they are carried by many regardless of the law on the subject. Penalties for violations are frequently light and often not enforced. Nearly every so-called "Detective Magazine" carries a string of advertisements of cheap revolvers, guaranteed to kill. Mail order houses furnish weapons to any one, old or young, sane or insane, good or bad, without the least difficulty. Some important mail order houses have of late discontinued the practice while magazines seem to show a like commendable tendency with regard to the advertising of firearms to be purchased by mail. One of these publications of a very large circulation, sold on every news-stand throughout the country, advertises in its July 1925 issue, among others, 'Ranger Blue Steel model, only $6.85 — order today. Guaranteed powerful, accurate and smooth action. Sent in sealed package. Baltimore, Md.' A second advertisement reads in part, 'Twenty-shot automatic, $8.45, same as used "over there," New York City.' A third reads 'Get this gun, only $6.45. For dependable demonstration and smoothness of action get this. New York.' The fourth reads, 'Six-shot, greatest bargain ever offered, $6.25. Sells elsewhere for $15.00. Pay postman on arrival, New York.' The fifth reads 'Here is your chance to get the king of revolvers, $9.65, New York.' The sixth reads, 'King of revolvers, never out of order, $9.75, New York.' While the seventh reads, 'Finest perfect revolver. Quick as a flash. Great penetrating power, $6.45, New York.'"[14]

The more recent eloquent commercial appeals for the purchase of guns taken from a *single* issue of a well-known periodical read:

"Brand new police model left wheeler. Our new improved Swing Out Hand Ejector is so well built and powerful, we could guarantee it a life time. . . . Worth double. Send no money. Pay on delivery our cut price $13.65."

"Texas Ranger. All prices smashed. Cut to $9.25. Buy now and save 50 per cent. Send no money. Pay postman on delivery $9.25 plus postage. New York."

"Final Sale. Cut to $8.99. King of Revolvers. Has all improvements of latest guns, $35.00 value. Send no money. Pay on delivery $8.99, plus postage, New York."

[14] Frederick Hoffman, "The Homicide Problem," October 1925, Newark, N. J., p. 4.

"Sale! Cut to $9.15. Buy direct and save money. . . . Six shot, accurate light action, sure fire, hard hitting, full rifled barrel. Best mark, latest model. Fully guaranteed. Send no money. Pay postman, Baltimore."

122. **Practical Suggestions on the Regulation of the Sale of Firearms.** In view of the deplorable spread of banditism throughout this country, it seems that rigid measures should be adopted in order to curtail the unrestricted sale of firearms. The following practical methods may be suggested:

1. The sale and purchase of firearms of every description through mail-orders or by express should be declared illegal and said articles non-mailable.

2. Every person desiring to purchase an automatic gun should be required to apply in person for a permit to the nearest police headquarters.

3. The application for the purchase of firearms must contain:
   a. The full name and address of the prospective purchaser,
   b. The name of the concern where the gun is to be purchased, and
   c. An exhaustive explanation of the reasons for said purchase.

4. The application must be accompanied by three photographic pictures of the applicant, each bearing his signature.

5. Simultaneously with the filing of the application the police should make a finger print registration of the applicant.

6. The granting of the permit should be preceded by:
   a. A careful investigation of the accuracy of the information furnished by the applicant,
   b. The examination of the applicant's finger print record and comparison with the records on file.

7. If and when the permit is granted, one copy of the photographic picture should be sent by the police headquarters to that concern, where the purchase of the gun is to be made, so as to prevent the possibility of illegally ceding or selling the permit thus obtained by the applicant, to another unauthorized person.

8. The concerns dealing in firearms should be required to keep complete records of their sales, filing monthly reports thereon with the nearest police headquarters.[15]

While all these precautions, combined, naturally would not eliminate illicit acquisition of firearms, yet they certainly would make the task of the professional gunman more difficult. At the same time, every honest person would gladly adhere to the prescribed procedure, because he would know that it had been put into effect for his own protection.

123. Criminality and the System of Punishment. Criminology seeks to discover and analyze the *general* causes originating and promoting the delinquent propensity. It is not its appropriate function to discuss the legal significance of those statutes which, for some reason, may be found inadequate, or to enumerate such penal measures which, under given circumstances, ought to be enacted in order that the spread of some specific crimes be arrested. The demoralizing significance of the Eighteenth Amendment, as well as the criminogenic aspect associated with the failure of the states to check the sale of firearms, were examined here, merely for the purpose of elucidating the point that both deficient legislation and the absence of adequate protective laws are sometimes responsible for the growth of criminality.

The study of the different new penal measures and projects and their critical analysis form the subject of that branch of the criminalistic science which in Germany is known as "*Kriminalpolitik*" or in Russian — "*Ougolovnaya Politika.*" They do not properly belong to the discipline dealing with the *aetiology of crime.*

Likewise, the much debated subject of punishment, logically, is not the province of criminology, but penology, inquiring into: (a) the general notion of penal phenomena and (b) the organ-

[15] In 1925, a bill was introduced in the House of Representatives (No. 4502) providing: "That pistols, revolvers and other firearms capable of being concealed on the person are hereby declared to be non-mailable and shall not be deposited in or carried by the mails delivered by any postmaster, letter carrier, or other person in the Postal Service." It was proposed to make the violation of this law punishable by a fine not exceeding $1000.00, or imprisonment not more than two years, or both. However, this bill, so far, has not been passed by Congress.

ization and corrective effect of penitentiary institutions, including the various prison reforms (*Strafrechtsreform*).

It is true that some criminologists both in the United States and Europe seek to establish a causative connection between the particular system of punishments and the statistical fluctuations of delinquency.

Recently, attempts were made to attribute the increase in the number of crimes to the laxity of the criminal courts. Yet, the figures set forth in support of this theory are obviously inconclusive.

Professor Franz Exner's (Leipzig) tables for Germany are typical, indeed. On the one hand, he refers to the number of persons convicted for compound larceny and sentenced to hard labor (table I); secondly — to the number indicted for simple larceny upon whom the same punishment has been conferred (table II). In both cases, as will be noticed (see page 205), the German Courts of late manifested a lenient tendency.

In fact, these statistics, while very instructive from the standpoint of the *author's* theory (criminality as a compound function of excessive social friction), prove nothing whatsoever in the way of determining the causative relation between the nature of the sentences imposed and the increase or decrease of the number of crimes committed.

The analysis of Professor Exner's data leads to the following considerations: In the case of simple larceny, during 1914–17, there was little leniency on the part of the German Courts; accordingly, the percentage of those sentenced to hard labor was higher and the total number of offenses was lower than in 1914–17 and 1921. Furthermore, in 1921, the Courts seemed to have taken a milder attitude toward these particular offenses, with the result that the number of simple larceny crimes increased considerably.

On the contrary, with regard to *compound larceny,* during the period 1914–17, the German Courts evinced a policy of extreme mildness as compared with the year 1921. Nevertheless, and despite the severity of the Courts, in 1921, the number of these offenses for compound larceny showed a staggering increase.

I Compound Larceny (Sect. 243, Penal Code)

Year	*Average of Yearly Convicted*		*Percentage of Persons sentenced to Hard Labor*
	Absolutely	*Per 100,000 of punishable population*	
1884–1893	8,076.8	23.8	14.3
1894–1903	9,639.1	25	7.6
1904–1913	13,263.5	29.3	3.5
1914–1917	18,940.2	?	1.9
1921–	49,290	104	3

II Simple Larceny (Sects. 242, 244 Penal Code)

Year	*Average of Yearly Convicted*		*Percentage of Persons sentenced to Hard Labor*
	Absolutely	*Per 100,000 of the punishable population*	
1884–1893	11,376.6	33.6	33.6
1894–1903	12,296.2	32.2	25.4
1904–1913	14,064.3	31.8	15.6
1914–1917	9,409.2	?	17
1921–	15,199.0	34.7	9 [16]

What these tables do actually prove is that the year 1921, regardless of the more or less lenient tendency of the German Courts, gave an astounding increase in the number of crimes committed.

It will be recalled, however, that 1919, 1920 and 1921 were the years of the German Communist Revolution, accompanied by general political and social upheaval; because of *this,* and

[16] "*Zur Praxis der Strafzumessung*" by Professor Dr. Jur. Franz Exner in Leipzig, see "*Monatsschrift für Kriminalpsychologie und Strafrechtsreform,*" *Heft* 9–10, September 1926, Heidelberg, p. 366.

not owing to any astronomical differences in the attitude of the German judges towards compound or simple larceny, the number of these crimes, *and all other offenses,* was bound to swell to a degree hitherto unknown.[17]

124. Capital Punishment and Crime Ratio. Turning now to the United States, we find a very similar situation revealed by Professor Sutherland. He undertook a comparative study of the effect of capital punishment on the number of deaths resulting from homicides in the different states with and without death penalty. His figures for the year 1920 are as follows:

NUMBER OF DEATHS BY HOMICIDES PER 100,000 POPULATION IN STATES WITH AND WITHOUT THE DEATH PENALTY, 1920

States with Death Penalty		*States without Death Penalty*	
New Hampshire	1.8	Rhode Island	1.8
Massachusetts	2.1	Maine	1.4
Vermont	2.3		
Connecticut	3.9		
California	8.3	Washington	5.1
		Oregon	4.1
Nebraska	4.2	Wisconsin	1.7
Indiana	4.7	Minnesota	3.1
Ohio	7.0	Kansas	4.7
Illinois	7.4	Michigan	5.5
Missouri	7.9		[18]

Commenting upon these figures, Professor Sutherland states:

"This shows that the number of homicides is somewhat less in the states without capital punishment, but the significant difference is

[17] Here are other comparative figures for Germany:

	Number of Convictions per annum.	
	1914–1917	*1921*
Fraud	2659.2	2799
Counterfeiting currency	79.7	339
Murder	124.	389
Abortion	1228.7	4409

(*Ibid.*, pp. 368–369).

[18] Professor Edwin H. Sutherland, *Op. Cit.*, p. 369.

not between the states that have capital punishment and those that do not, but between the different sections of the country, regardless of whether the states have or do not have capital punishment. The composition of the population or the general culture of the section is much more important than the presence or absence of the death penalty in determining homicide rates." [19]

Now, we are quite in accord with the first part of Professor Sutherland's statement, for it is a fact that the process of the formation of delinquent instincts is very slightly influenced by the penal system. Consequently, the presence or absence of the death penalty has no causative connection with the homicide rate or the number of deaths resulting therefrom. However, on the basis of the two statistical tables it is hardly possible to draw the conclusion that either the composition of the population or the general cultural level prevailing in a certain section of the country actually determines the upward or downward trend of criminality. Indeed, the States of Connecticut and Oregon, so far as their ethnical and cultural symptoms go, have very little in common; nevertheless, the death rate due to homicide is almost equal, *viz.*, 3.9:4.1. The same is true regarding two other States — Washington and Michigan; there, again, the percentage relation is practically identical — 5.1:5.5. On the other hand, the general industrial and educational conditions in Wisconsin and Michigan are analogous; still, we observe that the death rate by homicides in the former State was 1.7, whereas in Michigan — 5.5.

125. **Crime and Impunity.** The criminogenic significance of impunity is obvious, especially in its relation to professional criminality. Analyzing the contents of the hesitative oscillations preceding the commission of a criminal act, we find in the mind of the "professional" there are but two classes of considerations which either strengthen his resolve to undertake the specific crime, or, on the contrary, lead him to refrain from its perpetration:

a. The sum total of external circumstances favoring or hindering the accomplishment of the offense, and

b. The chances of being caught.

[19] *Ibidem*, p. 369.

The first proposition is largely dependent upon " good luck " because it is not within the power of the delinquent to alter substantially the conjuncture of the outward facts forming, as it were, the background of the crime itself. It is true, that by studying the outstanding conditions incidental to the contemplated deed, the transgressor succeeds in determining those elements which have to be taken into account at the time of the actual execution of the crime. An experienced burglar will not break into an apartment without having preliminarily investigated the location of the premises, the make-up of the family occupying the apartment, the habits of its occupants, the opportune time for the proposed invasion, the methods of escape, and the like.

All this information, having been gathered and systematized in the mind of the delinquent, the technical problem of the commission of the crime still remains unsolved. Presently it becomes necessary to devise a plan of action, determining the methods of " work," the tools with which the penetration of the apartment can be accomplished, and so forth. But, above all, — the recidivist seeks to evolve a scheme insuring his safe escape and impunity. So far as the professional delinquent is concerned, the fear of being caught is, thus, the only psychic obstacle standing between the criminal intent and its realization. Were this element nonexistent, there would be nothing to hold back the habitual law-breaker and prevent him from breaking the law.

The Chicago Crime Commission rightly pointed out the disturbing fact that the impunity of the criminal is one of the fundamental problems of the present " crime situation." With regard to the murder record for Chicago and Cook County, the results for the year 1921 were summarized as follows:

" Murders committed, 190; alleged murderers arraigned in court, 225; alleged murderers who never stood trial, 113; alleged murderers acquitted, 57; murderers hanged, 5; murderers sentenced to death and escaped from custody, 1; murderers sentenced to penitentiary, 45; murderers sentenced to reformatory, 1; murderers sentenced to Chester Asylum for Criminal Insane, 3." [20]

[20] Bulletin of the Chicago Crime Commission, No. 22, February 1922, Third Annual Report, p. 23

The picture did not appear more hopeful with respect to the cases where the charge was robbery. During 1921, there were 1293 persons charged with this offense. Only 381 of all the gunmen tried in the criminal courts during that year, suffered any penalty.[21]

This intolerable condition is by no means typical of Chicago alone. Referring to St. Louis, for the period from October 1, 1923 to October 1, 1924, the Missouri Association for Criminal Justice made public the following data:

"The records in the Police Department show that during that period 2701 burglaries were reported, but 266 warrants were applied for, 49 of which were refused by the Circuit Attorney and 217 issued. Only 107 persons received punishment, the others against whom warrants were issued having been released at some stage during the prosecution.

The police record during this period showed 2075 robberies committed, but there were only 379 warrants applied for, of which 132 were refused by the Circuit Attorney and 247 issued. Only 85 persons received punishment out of the 247 charged, the others having been released before punishment.

The police record during that period shows 4277 larcenies reported and 436 warrants applied for, of which 160 were refused and 276 issued, but out of 276 persons against whom warrants were issued and prosecution started, but 94 were punished.

There were 369 complaints for embezzlement and fraud during that period, but only 17 persons were punished.

758 forgeries were reported to the police and 30 persons punished. 3115 automobile offenses were reported to have been committed and only 16 punished.

This was a total of 13,444 major crimes reported in the seven classes of felonies indicated, and during the same period only 374 persons are shown by the records to have been punished in these classes of cases." [22]

The situation in Kansas City was still worse. According to the same Survey:

[21] *Ibidem.*

[22] Report of Arthur V. Lashly, Operating Director of the Missouri Association for Criminal Justice, presented to the Annual Meeting of the Association on January 12, 1926, p. 10.

" During the same period 1282 robberies were reported to the police in Kansas City, and for the same period 193 warrants were applied for by the police for that offense; 22 were refused and 171 issued. Of those against whom warrants were issued, only 46 were punished on prosecutions starting in the Police Department. With no record of crimes reported other than through the Police Department, we find an additional 130 warrants issued on cases not going through the Police Department, of which 33 were punished.

In the same period 2375 burglaries were reported to the police, and during that year only 20 persons were punished on charges originating in the Police Department. 27 others were punished out of 72 warrants issued in cases not going through the Police Department.

These figures indicate that in St. Louis the chances for one committing the crime of murder or manslaughter are six to one against any punishment, and in Kansas City, eleven to one.

One who contemplates robbery in St. Louis may know in advance that his chances for escaping any penalty are twenty-four and a half to one, and in Kansas City, on the basis of police figures alone, twenty-eight to one.

If he contemplates burglary, he may know in advance that his chances for escaping punishment are twenty-five to one in St. Louis, and at least fifty to one in Kansas City, and upon the basis of the police figures alone, more than a hundred to one." [23]

There is hardly anything to be added to these findings of the Missouri Association.

126. Impunity and the Technique of Criminal Investigation. In most countries, the low standards of detection methods occupy a prominent place among the principal causes of the impunity of the criminal.

Strictly speaking, the *technique* of criminal investigation is neither a legal nor a sociologic problem, inasmuch as penal statutes merely lay down the general principles of criminal procedure prescribing certain formal rules to be pursued by the magistrates in the course of their work. But the law rightly refrains from teaching the prosecuting attorney *how* to examine a bullet, *how* to take a picture of a suspicious stain, *how* to detect finger impressions on a sheet of paper or on a steel case, *how* to preserve finger-prints, *how* to make a verbal portrait, *how* to analyze the chemical contents of ink, and so forth.

[23] *Ibidem*, p. 12.

Even if a code should endeavor to elaborate the technical principles pertaining to the practical phase of criminal investigation, little benefit could be derived therefrom, since the methods of detection are subject to continuous changes; they improve with the advancement of human learning in general and the progress of natural sciences in particular.

The recidivist, as we know, is trying to keep pace with the achievements of science, in so far as these can be utilized for the perfection of the criminal technique. He is intimately familiar with the methods employed by the judicial authorities to whom the detection of crime is entrusted. It is an everlasting warfare between the professional criminal on the one hand, and the investigator on the other, in which he who is better equipped and possesses more skill, must win.

127. Unproductiveness of Criminal Investigation in the United States. The singular unproductiveness of criminal investigation in the United States, especially when compared with the standards of detection in a number of European states, — is due to several reasons of which, perhaps, the more important are these:

1. The absence, in the United States, of that institution which in France is known as "*Police Judiciaire*" whose primary duty is to render material assistance to the "*Parquet*" in the course of gathering evidence against the defendant.

2. The absence of highly trained and politically independent judicial officers whose functions would be analogous to those exercised by the *Untersuchungsrichter* in Germany, *Juge d'Instruction* in France, *soudebnij sledovatel* in Imperial Russia.

3. The overloading of the police personnel with all sorts of work having absolutely no relation to the *de facto* protection of the citizens.

4. The absence of interstate or federal registration of the delinquent strata of the population; more specifically, the unsystematic way in which finger-print records are being kept in and by the different indentification bureaus.

5. The backward methods of the technique of criminal investigation.

6. *The absence of politically independent institutions of scientific criminal research,* whose function it would be to assist

the police and the judicial authorities in the difficult task of determining the material nature and legal value of evidence to be brought before the courts.

The modern criminal is cognizant of the fact that a crime which has been scientifically executed can be correctly and proficiently solved only if it be investigated in a scientific manner. But the delinquent strata of society must experience a feeling of comfort when they consider that the prevailing systems of criminal investigation in this country are still largely based upon hopelessly primitive methods with witness accounts and hearsay-stories, constituting the central part of evidence brought before the Courts.

128. Oral Evidence and its Place in Criminal Investigation. The administration of justice is inconceivable without witness testimony; however, if criminal procedure were to depend only upon what a person might have seen or heard, the very idea of justice would be left at the mercy of human memory, which is always limited, and the human heart, which is not always honest.

At present it is hardly necessary to produce voluminous proof to the effect that oral testimony in criminal courts is seldom the incarnation of truth, and that truth itself is being often perverted, either intentionally or otherwise, by those who are called to make their depositions before the goddess of Justice.[24]

The practical and legal significance of witness testimony is a question of intense interest not only to criminology but psychology and philosophy as well. Here, we shall confine ourselves to a few brief remarks on the subject, in order not to deviate from the main theme of our inquiry which is the criminogenic nature of the inadequacy of investigative methods in criminal proceedings.

Most witness accounts which we encounter in every-day-life are *incorrect* and, therefore, misleading. Hardly one affidavit out of one hundred is accurate in its representation of the facts observed and the estimation of their causative correlation and intrinsic meaning.

[24] On the practical significance of witness testimony and its place in the process of the detection of crime, see Boris Brasol's "Methods of Criminal Investigation," pp. 70–72, St. Petersburg, 1915. (In Russian)

129. Misleading Testimony — Intentional, Unintentional. All misleading testimony can be roughly divided into two categories: (a) *intentional,* (b) *unintentional.*

False testimony is given intentionally not only by the defendant but also by witnesses and the victims of crimes, owing to different reasons, such as relationship or friendship, bribery, the frequently recorded desire of a person to assume a prominent role in a criminal case, and so forth. Virtually in every trial oral evidence is concocted of half-truths, mistaken observations, subjective impressions and deliberate lies.[25]

Speaking of intentionally false testimony Judge M. D. Chalmers said this:

"Though most of the perjury committed in county courts and police courts is of a petty nature, still in the aggregate it constitutes a serious impediment to the administration of justice. . . .
Few people, I think, realize the extent to which perjury is prevalent among the lower classes in England. . . .
My county-court experience is mainly confined to Birmingham, but I have no reason to believe, and I do not believe, that Birmingham is worse than other large urban courts. If that be so, after making all allowance for hard swearing which is not perjury, there remains a terrible residuum of willful and corrupt perjury, which urgently calls for a remedy, if the administration of justice is not to be reduced to a farce."[26]

In judicial proceedings, however, unintentional misleading testimony is usually more difficult of detection than a willful perjury, and is even more dangerous to the ends of criminal justice than the latter.

130. Causes of Unintentional False Testimony. The reasons leading to unintentionally incorrect testimony can be summed up thus:

1. Perceptions incorrect because of the lack of attention, or unfavorable conditions for observation;

[25] No one interested in this important subject should fail to familiarize himself with Professor John H. Wigmore's classical work "The Principles of Judicial Proof," Boston, 1913, pp. 312–743.

[26] See M. D. Chalmers' article "Petty Perjury" in Vol. XI, p. 219, 1895 *Law Quarterly Review.* Quoted from Professor John H. Wigmore's *Op. Cit.,* pp. 319, 320.

2. Incompleteness of mental perceptions and more particularly, the omission of some constituent element in the happening observed;

3. Erroneous understanding of the practical meaning of the event recorded;

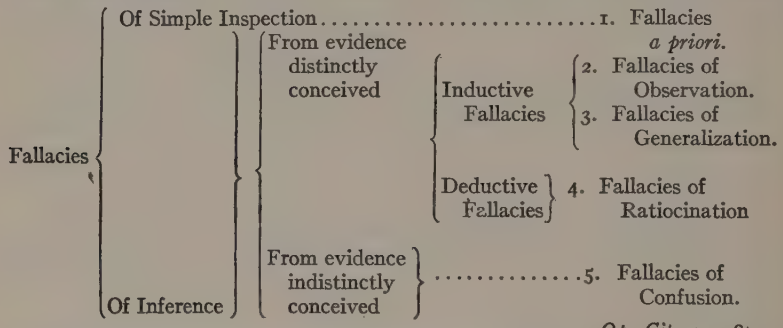
4. Erroneous deductions from correct observations;

5. Observations correct and complete, but the discoördination of the elements perceived leads to an erroneous interpretation of the phenomenon in question.[27]

Probably the two more frequent causes in the formation of fallacious conceptions — and consequently, in the verbal or written misinterpretation of events observed — are, first, the lack of attention, second, the mistaken deduction from facts correctly perceived.

On the question of the first factor, it is necessary to remember that the mind can be brought to an attentive state only by an

[27] John Stuart Mill, in his classification of fallacies, presents the following table enumerating the five distinguishable categories of erroneous conceptions:



Op. Cit., p. 487.

For obvious reasons in these two classifications pathological lying has not been included, for this process of reasoning does not fall under the range of normal mental operations (see Chapter IX). Nor do we touch upon the subject of expert testimony which is sometimes biased and often scientifically incorrect (see Chapter VIII, §§ 192–195). On the other hand, we leave out the discussion of the legal validity and practical value of children's testimony. Every jurist knows how conspicuously unreliable are the depositions made by adolescent witnesses. At the XI. Congress of Legal Medicine held in Paris (May 27–29, 1926) special attention was devoted to this subject, and the suggestion was made that children between the ages of eight and fifteen appearing as material witnesses, be subjected to mental tests (see No. 8, October 1926 issue of *Annales de Médecine Légale de Criminologie et de la Police Scientifique*, Dr. A. Collins' report "*La Suspicion Légitime du témoignage des Enfants Témoins Judiciaires*," (pp. 379–391).

inner endeavor which implies will in the mental process. To use Professor James' words: "Focalization, concentration, of consciousness are of its essence."[28] This condition is partly due to the fact that our mind, at any given moment, can apprehend only a limited number of notions. Therefore, unless concentration is stimulated, the mental apparatus fails to take *sharp and exact* notice of a thing entering into the field of its cognition. The mind does register an outward impression but the perception, thus formed, is far from being precise. Such being the *natural* state of the formation of our ideas, the observation faculty in the average person is usually quite undeveloped, which makes his testimony unreliable.

On the other hand, as stated, incorrect judgment is frequently the result of fallacious deduction from phenomena correctly observed. In most cases the defect is originated by the lack of ability to determine the causative relationship between two or more facts. For instance: we hear thunder, *not having seen the lightning which preceded it;* then, almost immediately, after the sound of thunder, we see the second bolt coming down. If we know nothing about the causative relation between thunder and lightning, the mind is inclined to regard the former as the cause of the latter and not vice-versa.

James, referring to this point, says:

"It has long been noticed, when expectant attention is concentrated upon one of two sensations, that the other one is apt to be displaced from consciousness for a moment and to appear subsequent; although in reality the two may have been contemporaneous events. Thus, to use the stock example of the books, the surgeon would sometimes see the blood flow from the arm of the patient whom he was bleeding, *before* he saw the instrument penetrate the skin. Similarly the smith may see the sparks fly *before* he sees the hammer smite the iron, etc."[29]

The mind may correctly register two consecutive events: (1) A, and (2) B, but the succession of the two facts will be perceived incorrectly: (1) B, and (2) A. The practical significance of this error, sometimes, is fatal. For example: witness

[28] James, *Op. Cit.*, Vol. I, p. 404.

[29] *Ibidem*, Vol. I, p. 409.

M sees two persons, X and Z; Z strikes a blow at X; X strikes back and wounds Z. Thereupon X sets forth the theory of self-defense. Z contradicts it. M, who had been watching the happening, testifies that X had struck the first blow.

131. Oral Evidence and Material Evidence. Now, the important point regarding fallacious conceptions is this: the administration of criminal justice, even in our day, manifests the unfortunate tendency of over-estimating the legal value of witness testimony, instead of systematically seeking to reduce its role in the system of judicial proof.

Modern technique of detection, lest it lag behind the methods employed in the work of the professional delinquent, must base its findings upon *material* evidence. By this it is meant that the investigation must endeavor to re-enact the mechanism of the crime and identify its author by means of a scientific examination of the physical objects connected with, derived from or pertaining to the transgression itself. These tangible, measurable and visible things — these witnesses who are eloquent in their very silence — go to make up the atmosphere of crime which *always,* in one way or another, projects itself into the world of physical phenomena.

In America, there is an awakening of interest in the problem of improving the methods of criminal inquiry. The Bureau of Forensic Ballistics is one of the many outward symptoms of this condition. The aim of this institution is to conduct strictly scientific and unbiased research in all matters relating to the identification of firearms.

It will be also recalled that in 1925 an attempt was made to establish an adequately equipped Bureau of Criminal Science in conjunction with the New York Police Department. The plan itself was highly commendable. Unfortunately, however, because of many reasons the Bureau, instead of assuming an active and constructive part in the improvement of the general system of criminal detection, remained immobile and finally went out of existence.

Much has been done by the American Institute of Criminal Law and Criminology and its Journal for the advancement of the technique of investigation. Nevertheless, viewing the situa-

tion as a whole, the country is still adhering to rather primitive ways and means of conducting criminal inquiries.

The unfortunate habit of deifying the half-ignorant and almost invariably incompetent detective is still prevalent on these shores. The jurors, and even the judiciary, continue to maintain boundless faith in the defendant's confession which is considered the "queen of evidence," while the police, in certain localities, still resort to the procedure of "knocking out" or "squeezing out" needed testimony. This is not far afield from the "herring method" of interrogating the criminal, practiced in some backward countries.[30] It is hardly necessary to add that such forced confessions never lead to stable judicial results.

Owing to this general situation, many offenses committed in the United States remain unsolved and their authors unpunished. Accordingly, the recidivist has all the reasons to hope for impunity. He knows that there is more than an even chance for him to escape justice, and this, *in se,* is a powerful factor in the promotion of anti-social instincts, automatically building up and strengthening the ranks of professional delinquency.

132. Institute of Scientific Criminology. Its Practical Significance. Today, the need is not for an everincreasing number of prohibitive laws; indeed, of laws there are plenty. But conditions should be created which would make the enforcement of the existing statutes technically possible. This is not likely to be achieved so long as the general standards of criminal investigation continue to remain inefficient.

European experience has clearly demonstrated the fact that progress in the system of criminal detection is but a slow process which can only be facilitated by scientific research carried out in an orderly manner by professional organizations, specially equipped for this purpose. Such institutions as *Service d'Identité Judiciaire* in Paris, the *Police Laboratory* in Lyon, the *Technical and Anthropometrical Department* of the *Min-*

[30] The herring method amounts to this: the policeman, in seeking to "squeeze" a confession out of the suspect, keeps him incarcerated in a cell, and no other food than herrings is served to him. After several hours of this sort of diet, his thirst grows so acute that he will "admit" almost anything, so as only to get a glass of water. On the nature of self-criminative statements, see Professor John H. Wigmore, *Op. Cit.,* pp. 555–558.

istry of Interior in Belgrade, and the *Bureau de Police Scientifique* in Lausanne, are among the best-known agencies for conducting work of this kind.

There is no reason why this country, with its boundless wealth, should not have *at least one* institute of scientific criminology whose fundamental duty would be to assist the police-force in their singularly difficult work of investigating crimes. Wherever circumstances would require, trained experts of such an institute would actively participate in the examination, not as mere detectives but as specialists thoroughly conversant in some particular branch of criminal science.

It must be borne in mind that the initial steps in any investigation are of paramount importance, exercising a strong influence upon the final outcome of detection. For instance, the examination of the premises where the corpse of a murdered person is found may often determine the whole scheme and direction of the future inquiry. However, this act is dependent not only upon "natural ability" of the officer detailed to the work, but to a greater extent — on special training and scientific knowledge which cannot be expected of the average detective.

Besides, the technical equipment of a patrolman investigating a crime is quite insufficient for solving many difficult problems arising in the course of the examination. Even the relatively simple task of preserving and analyzing finger impressions, usually requires expert ability in operating with hydro-fluoric acid, iodine vapors, or graphitic powder.

Those experienced in the modern methods of inspecting forged or questioned documents, know that the composition of the paper and the chemical nature of the ink cannot be properly ascertained without micro- and macro-photography, micro-chemistry and some highly complex optical implements, such as the spectrophotometer or the different apparatus for ultra-violet rays.

Still more difficult of solution are some cases of poisoning by means of inoculating deadly bacteria into the body of the victim. Here, then, toxicology, bacteriology and histology have to render practical assistance to the investigator.

Thus, in the course of a criminal inquiry, many departments

of human knowledge should be summoned and called in council. It is obviously impossible for the prosecuting attorney or the police lieutenant to make much headway in his work without relying upon the labors of an expert, or a whole group of experts. Instead of calling upon the services of casual specialists, who are often ill-equipped for the solution of the proposition brought to their attention, it should be the function of the proposed Institute to render scientific assistance to those on whose labors the honor, freedom or life itself of the defendant might depend.

From the point of view of expediency, it is very advantageous to have all the branches of criminal research centralized in one institution, rather than scattered — the finger-print bureau in one place, the chemical laboratory in another, and the medical-chamber somewhere else.

The brief sketch of the organization of the suggested Institute of Scientific Criminology and the equipments of its different departments annexed hereto, is merely a tentative scheme. On the whole, it does not deviate much from the organization of the model " Chamber of Scientific Judicial Tests," which, in 1912, was established in St. Petersburg in conjunction with the Court of Appeals. It functioned with marked success until 1917, when it was burned down and completely destroyed by the revolutionary mob.

No recommendations are made concerning the appliances for the Chemical Department, because standard laboratory equipment will meet the needs of the Institute. It is apparent that this particular division should have all the instruments necessary for conducting micro-chemical tests, which, in criminal investigations, are often of vital significance (rapes, forgeries, murders). For practical purposes it is advisable that the laboratory should maintain a complete set of samples of inks that are in commercial usage (forgeries).

With respect to the Finger-print Subdivision, the following must be considered: the modern system of identification of the criminals is largely based upon correctly taken and scientifically classified finger-impressions. The Bertillon method of anthropometry is being gradually eliminated from police practice.

It should be the province of the Institute to establish an exemplary bureau of dactyloscopic research along the lines of that functioning at present in conjunction with the Police Department of New York. It may well be that in the future such a bureau operating as an integral part of the Institute, would become the nucleus of a national organization for the identification of professional criminals. But even in its initial form, it would be a valuable center for young lawyers desiring to familiarize themselves with the scientific foundation and technical aspect of dactyloscopy.

Generally speaking, the sketch of the Institute is intentionally condensed to a fundamental outline of its organization; only with reference to the Optical Chamber an exception is made, its implements and equipment being dealt with somewhat *in extenso*. This is due to the fact that the choice of the particular optical apparatus presents a number of difficult problems which are best solved by those who have had practical experience in laboratory work of this special kind.

133. Institute of Scientific Criminology. Scheme of its Organization.

INSTITUTE OF SCIENTIFIC CRIMINOLOGY

(Tentative Scheme of Organization)

DEPARTMENTS

I. *Chemical Laboratory.*

II. *Optical Chamber:*

1. Magnifying Glasses:
   Set of magnifying glasses (C. Zeiss x 8, Triple aplanatic x 15, etc.).

2. Metro-Photography:
   Metro-photographic apparatus (Bertillon).

3. Microscope:
   Wales type microscope (Swift & Son).
   Zeiss Microscope, Model ESA.
   R. M. S. Microscope (C. Bakers, London).
   Massive Model Microscope for medical research (R. & J. Beck, Ltd.).

Leitz microscope.
Photo-micrographic microscope (C. Zeiss).

4. Optical Outfit:
   Test plates.
   Apochromatic objectives.
   Sliding objective-changer.
   Projection eye-pieces.
   Sub-stage condensers (paraboloid condensers reducing spherical and chromatic aberration).
   Illuminators (opaque and vertical).

5. Sources of Illumination:
   Neutral wedge-light moderators.
   Oil-lamp (for low power work).
   C H (acetylene) lamp.
   Oxy-hydrogen lamp (lime-light).
   Mercury vapor arc-lamp.
   Hand-feed electric arc-lamp.
   Heliostat.

6. Cameras:
   Simple vertical camera (C. Zeiss).
   Simple vertical camera (G. Yvon).
   Combined vertical and horizontal apparatus (C. Zeiss).
   Photo-micrographic apparatus (Leitz).
   Photo-micrographic apparatus (J. E. Barnard & F. Welch).
   Reflex photographic camera.
   Micro-camera attachment.
   Metallographic microscope (H. Le Chatelier).
   Apparatus for ultra-rapid cinematography (L. Bull).
   Micro-photographic apparatus for ultra-violet rays (C. Zeiss).
   Binocular microscope (Nachet).
   Stereoscopic microscope (Druner-Zeiss).
   Micro-radiographic apparatus (P. Goby),
   Spectro-photometer (A. Jobin).

7. X-ray Cabinet:
   (Standard Equipment).

III. *Medical Division:*

1. Scientifically equipped morgue.
2. Chamber for post mortem examination.
3. Toxicological subdivision.
4. Craniological subdivision.
5. Anthropological survey.

IV. *Tools, Instruments & Mechanical Department:*

1. Scales, measurements and gauges.
2. Firearm subdivision.
3. Locks and keys.
4. Typewriters of different patterns and multigraphing.
5. Moulding.

V. *Registration:*

1. Finger-print subdivision.
2. Photographic registration of criminals.
3. General legal registration.

VI. *Criminological Museum:*

1. Collections of forged bills, stamps, etc.
   Instruments and materials used for falsification of documents.
   Photographic enlargements of more important forged documents, etc.
2. Burglar's Equipment:
   Standard outfits, materials and tools used for cracking safes, etc.
3. Criminal Anarchy:
   (Exhibits of explosives, etc.).
4. Murderers' weapons.
5. Photographic collections of notorious criminals and scenes of crimes.

VII. *Library:*

1. Criminology — General.
2. Criminal Statistics.
3. Methods of Criminal Investigation:
   (anthropometry, dactyloscopy, *police scientifique*, etc.).
4. Criminal Law:
   (statutes, codes, general reference literature).

5. Legal Medicine.
6. Psychology:
   (psychiatry, psycho-pathology, etc.).
7. Sociology:
   (general, anthropology, economics, etc.).
8. General Reference Library:
   (almanacs, registers, directories, dictionaries, etc.).

VIII. *Lecture Halls.*[31]

[31] We are indebted to Professor S. N. Tregouboff of St. Petersburg and Belgrade, for some of the suggestions regarding the organization of the Institute of Scientific Criminology, as it is outlined here. On the technical equipment of the Optical Chamber much useful information can be derived from the following studies: F. Monpillard's "*Macrophotographie et Microphotographie*," Paris, 1925; A. Jobin's (G. Yvon) pamphlet "*Spectrophotomètre*," Paris, 1922, the practical application of which was kindly demonstrated to the author of this volume by Dr. Edmond Bayle, in charge of the *Service de l'Identité Judiciaire* of Paris; and the most instructive volume, "Practical Photo-Micrography," by J. E. Barnard, F. R. S., and Frank V. Welch, Second Ed., London, 1925.

PART II

PSYCHO-PHYSICAL NATURE OF CRIME

CHAPTER VII. — BIO-PSYCHIC ELEMENTS OF CONDUCT AND CRIMINALITY

134. Scope of the Investigation. 135. Inferential Principles of the Anthropological School — "Normal Type." 136. Spread of Civilization and "Normal Type." 137. Interbreeding and the "Normal Type." 138. Psychic Characteristics and the "Normal Type." 139. "Criminal Type." 140. Genetics and the "Criminal Type." 141. Inheritability of Acquired Properties. 142. Inheritability of Delinquent Characteristics. 143. Heredity and Environment in Criminality. 144. Inheritability of Special Aptitudes of the Mind. 145. Absence of Biological Foundation of Inheritability of the Special Aptitudes of the Mind. 146. Acquired Characteristics of the Anti-social Propensity and Criminal Disposition. 147. Biological Elements of Human Behavior. 148. Fundamental Desires. 149. Instincts and Their Nature. 150. Sociologic Conception of Crime and Instincts. Reflexes. 151. Two Fundamental Classes of Instincts: *a*. Self-preservative and *b*. Reproductive. 152. Cognition in Instincts. 153. Instincts and Sub-instincts. 154. Perverted Instincts. 155. Imitation. 156. Biological Significance of Imitation. 157. Imitation and the Formation of the Criminal Propensity. 158. Temperament as a Factor in Human Conduct. 159. Affective Tonality and Transient Tempers in the Human Conduct. 160. Physiological Foundation of Temperament. *a*. Characteristics Dependent Upon Physical Anomaly. 161. Physiological Foundations of Temperament, continued. — *b*. Characteristics Dependent Upon Organ Inferiority. 162. Character, its Definition and Place in Human Conduct. 163. Sociologic Nature of Character. 164. Rationally Acquired Habits. 165. Rationally Acquired Criminal Habits. 166. Habits Originated by Suppressed Instincts. 167. Perverted Habits and Suppressed Instincts. 168. Criminal Habits — Instinctive and Rationally Acquired — Distinguished. 169. Obsessional Habits and Delinquency. 170. Summary.

134. Scope of the Investigation. So far, we have been dealing with the sociologic notion of crime, without paying much attention to the person of the delinquent himself. It was considered appropriate to examine first the social factors exercising a direct influence upon the aetiology of the egocentric propensity, because the phenomenon of crime occupies a steady place in the life of every social entity. Indeed, it is impossible to conceive an organized community or state without criminality as one of its constituent, although negative and morbid, manifestations, — a proposition which can be expressed thus: *Where there is a social order, there must be law; where there*

is law, there must be crime. Ubi societas — ibi jus; ubi jus — ibi crimen.

Equally unthinkable, however, is the condition of delinquency without the person of the delinquent, who is not only the author of the prohibited and punishable deed, but, as it were, a germ-carrier of that anti-social energy, the discharge of which constitutes the crime itself.

It therefore becomes necessary to discuss, even though briefly, the psycho-physical symptoms of criminality in order that four problems of momentous importance may be comprehended and perhaps solved:

a. Are there specific physical symptoms distinguishing a criminal from a non-criminal?

b. If the conclusion be drawn that such physical or psycho-physical symptoms are in existence, should they be considered congenital?

c. If there be nothing inherent in the psycho-physical symptoms of criminality, what then is the mechanism of the formation of criminal habits, and

d. Is there anything in the psycho-physical constitution of man that may justify the state in refraining from punishing the transgressor even though his guilt should be proved? (Chapter VIII.)

It will be recalled (Chapter I) that the anthropological school of criminology, in its earlier quests, has devoted much study to the discovery of such bodily anomalies as would account for the criminal predisposition. Profuse craniological and metrocephalic data were brought forward and scrutinized for the sole purpose of establishing a causative correlation between certain anatomical peculiarities and criminality. In this connection also great stress was laid upon morbid heredity. In some instances, as in the Juke, Cretien, Lemaitre and Fieschi families, the fact was demonstrated that the delinquent propensity is capable of reappearing in successive generations.[1] Still, despite the abundance of clinical observations and

[1] On this subject H. H. Goddard, in his book "The Kallikaks Family" (New York, 1912), states as follows: "At the beginning of the Revolutionary War a young man, known in the history as Martin Kallikak, had a son by a

statistical material gathered in the course of these labors, no durable nor conclusive results had been obtained, because of the vagueness of the symptoms themselves introduced in the general scheme of the investigation.

135. Inferential Principles of Anthropological School — "Normal Type." The whole trend of the anthropological thought is founded upon the inference of three, whether tacitly implied or distinctly expressed, principles which are closely affiliated to each other:

1. That there is a *normal* type of man,
2. That the physical deviation from the standard of normalcy generates the *criminal* type, and
3. That the social maladjustment and habitual misconduct are the congenital characteristics of the latter type.

In the analysis of these fundamental ideas, it seems necessary, in the first place, to question the correctness of the assumption that mankind, in the historical process of its growth, has actually created, or tends to evolve, anything approaching a *normal type,* either in the sphere of anatomical properties or psychic standards.

It is self-evident that many physical traits are common to all human animals. Broadly speaking, the structure of a man belonging to the Indo-European or Caucasian race is similar to that of the Polynesian tribesman or the Javanese aboriginal. Likewise the physiological apparatus with all its functions (muscular contractions of the heart, phenomenon of growth,

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nameless, feeble-minded girl, from whom there have descended in the direct line four hundred and eighty individuals. One hundred and forty-three of these are known to have been feeble-minded and only forty-six are known to have been normal. The rest are unknown or doubtful. Thirty-six have been illegitimate; thirty-three, sexually immoral, mostly prostitutes; twenty-four, alcoholic; three, epileptic; eighty-two died in infancy; three were criminal, and eight kept houses of ill-fame. After the war, Martin Kallikak married a woman of good stock. From this union have come in direct line four hundred and ninety-six, among whom only two were alcoholic, and one known to be sexually immoral. The legitimate children of Martin have been doctors, lawyers, judges, educators, traders, landlords, in short, respectable citizens, men and women prominent in every phase of social life. These two families have lived on the same soil, in the same atmosphere, and in short, under the same general environment; yet the bar sinister has marked every generation of one and has been unknown in the other." Quoted from "Principles of Genetics" by E. W. Sinnott and L. C. Dunn, p. 389. New York, 1925.

arrangement and work of the respiratory organs, etc.) is a standard pattern in all human beings of the same sex. Much in the same way, in all individuals, irrespective of any racial classification, we shall find: the material determining their physical constitution to be composed of approximately nine principal classes of cells and cell-products, with the cells, in turn, invariably divided into two regions: the nucleus with its nucleoli; and the cell-wall containing electrones gravitating around the nuclear portion.

When we, further, consider the chemical elements which go to make up the human body, the specific gravity and the relative weight of blood, and so forth, we may be sure to discover almost identical conditions in individuals of all ethnographic groups and racial strata.

However, leaving aside these and similar outstanding features, which are universal in the human race and which distinguish the latter from other zoölogical formations, cardinal differences can be perceived in the general types of men belonging to different races.

There is, indeed, a fundamental contrast between the physical characteristics of the chocolate-brown member of the Nyam-Nyam tribe (Northeastern section of Congo) with his round head and face, almond-shaped eyes, flat and square nose, prominently thick lips,— and the features of a Swede or a Slav.

Within the narrower frame of one and the same ethnic group — for example, the Non-Totemic — we observe many ramifications springing up from the Pigmy stem, each branch having evolved its own cranial characteristics and other structural modes. Even confining ourselves to one branch, — let us say, the Nilotic Negroes — we encounter many varieties, relating both to their anatomical symptoms and pigmentation. Throughout centuries and ages these various tribes, inhabiting Africa, have succeeded in preserving intact their specific characteristics, failing, in some cases, to develop into higher types or evolve a homogeneous ethnographic species.[2]

[2] A comprehensive chart on the descendancy of the Pigmy groups is given in Dr. Albert Churchward's valuable volume "Origin and Evolution of the Human Race" (London, 1921, p. 5). Besides, an instructive diagram on the various ramifications of the African Pigmies will be found on pp. 492 and 493.

136. Spread of Civilization and the "Normal Type." On the other hand, the levelling or equalizing effect of civilization proves to have but a restricted influence upon the evolution of a "normal type" despite the ever increasing tempo of intermixture of the diverse racial stocks. This is due to several factors of which, perhaps, the following are more important: *a.* the marked stability of racial properties; *b.* the decreased birth rate among civilized nations, especially among their educated classes which exhibit a stronger tendency towards standardization, and *c.* the deeply planted feeling of national self-preservation.

Referring to the question of birth rate in the United States, Professor Samuel J. Holmes, in his book "The Trend of the Race," quotes the following figures:

Decreasing Proportion of Children in the United States

Date	*Number of Children under 5 per 1,000 Women 16-44 Years of age*
1800	976
1810	976
1820	928
1830	877
1840	835
1850	699
1860	714
1870	649
1880	635
1890	554
1900	541
1910	508 [3]

[3] *Op. Cit.*, p. 120, New York, 1921. This table should also be compared with that on page 126, giving a graphic idea as to the *decreasing* size of American families from 1700–1879:

	Before 1700	1700–49	1750–99	1800–49	1850–69	1870–79
No. of children per wife	7.37	6.83	6.43	4.94	3.47	2.77
Percentage of childless wives	1.81	1.74	1.88	4.07	5.91	8.10
Mothers w. 6–9 chldr.	50.36%	42.89%	40.50%	29.17%	15.71%	8.57%
Mothers w. only 1 child	1.81%	4.11%	4.98%	7.96%	13.98%	18.%
Aver. age of marriage	21.4	21.7	22.	22.3	22.9	23.1

Ibidem, p. 126.

Analogous conditions are recorded in many other countries, such as England (with Scotland and Wales), Ireland, France, Germany, Austria, Hungary, Italy, Norway, Sweden, Russia, Spain, Holland and Belgium.[4]

Increased facilities in the means and ways of communication; emigration from overpopulated countries to states less densely inhabited; the live intellectual intercourse between the nations of the world — all these and similar influences fail to create an average type, and thus — the dividing lines in human society continue to persist, with the result that racial symptoms, vague as sometimes they may be, nevertheless remain ineradicable. In countries like the United States and Russia, where the population is composed of heterogeneous ethnic products, the diverse groups live side by side, without losing their racial characteristics.

137. Interbreeding and the "Normal Type." Meanwhile, interbreeding of varied peoples, instead of evolving standard or midway cultural qualities, often give birth to new half-blood types in which the distinguishing traits of both stocks are artificially brought together, co-existing unchanged for many generations. Such results may be observed in the mixture of Slavic blood with the inferior Mongol type in the Transbaikal region, as well as in the union of the Negro with the white man producing the mulatto offspring. The optimistic theory of the "melting pot" being subjected to impartial scientific scrutiny, proves not only doubtful, but altogether erroneous. For this reason we are in full accord with S. K. Humphrey's assertion that:

"Even if intermarriage were to become universal, our 'Melting Pot' would not give us in a thousand years what enthusiasts expect of it — a fusing of all our various racial elements into a new type which shall be true American. It will give our children for many generations a perplexing diversity in ancestry, and since they must reach back into that ancestry for characteristics, this diversity will increase the uncertainty of their inheritances."[5]

[4] See *Op. Cit.*, p. 119.

[5] See S. K. Humphrey, "The Racial Prospect," pp. 171, 172, Chapter entitled "The Mixing Pot," New York, 1920. On this subject consult also Professor Th. Ribot's "*L'Hérédité Psychologique*," pp. 177–180, Paris, 1925, Eleventh Ed.

Accordingly, such combinations are rather mechanically produced anthropological conglomerations than homogeneous racial entities.

These considerations led Gobineau to assert that all racial differences are permanent, and whatever modifications develop in consequence of migrations, interbreeding and cultural integration, such are not of a dominant, but recessive character, and, therefore, incapable of conveying basically new, or stereotyped, characteristics to the mixed ethnical offspring.[6]

A rule so generally expressed may be open to criticism, and certainly requires further investigation which might throw new light upon the whole racial problem. Still, the obvious fact cannot be denied that anthropological and linguistic symptoms which have been in existence for an indefinite, let us presume, N-number of centuries, are not likely to disappear in the near future, owing to the expansion of Western civilization and the accelerated tempo of the inter-mixture of heterogeneous stocks. So long as these ethnologic differences and marginal lines continue to prevail, it is hardly possible to entertain the idea of an average anthropological type.

138. Psychic Characteristics and the "Normal Type." Besides, when the world of psychic, mental and moral phenomena is studied, the same partitions among the nations are found; the same cardinal contrasts perceived; the same profound disagreements encountered, with the result that mankind, thus far, has failed to lay down a philosophy recognized as true, a moral

[6] In passing, it may be noted that the principle of racial stability has been recently corroborated by the analysis of the chemical properties of blood among different races. Dr. E. Manoiloff seems to have proved conclusively that the composition of Jewish blood, for instance, differs substantially from that of Russian blood. In his tests he has used five reagents: (a) 1 per cent alcoholic solution of methyl-blue, (b) ½ of 1 per cent solution of silver nitrate, (c) 1 per cent alcoholic solution of cresyl-violet, (d) 40 per cent solution of hydrochloric acid, and (e) 1 per cent aqueous solution of potassium permanganate, freshly prepared. The results of the experiments with 202 test-tubes, some containing Russian, and some, Jewish blood, established the fact that "in Jewish blood the color cresyl-violet must disappear entirely or almost so, and the blue or blue-green shade alone remains; in Russian blood the cresyl-violet color will partly remain insoluble, and we see generally a blue-red coloring." This goes to indicate that the oxidizing process develops more slowly in the Russian blood than in the Jewish. On this interesting subject consult Dr. Manoiloff's paper "Discernment of Human Races by Blood" in Vol. X, No. 1, January-March, 1927, of the *American Journal of Physical Anthropology*.

code regarded as just, social standards believed to be adequate by *all* the peoples inhabiting this world.

It will be readily admitted that among nations claiming to belong to Western civilization, — political, social, ethical, in short, ideological discords are also so great that it is difficult, if at all possible, to mint a uniform psychological pattern from materials so widely divergent as those furnished by a Scotchman on the one hand, and a Corsican on the other.

Nay, even within the narrow limits of one and the same nation, despite the relentless efforts on the part of the state, to bring all its members to one cultural denominator, the amplitude of mental fluctuations is still enormous; and probably centuries will elapse before the gulf separating the two extreme points of the intellectual range in any nation shall disappear.

What, then, is the normal *type?* What are its properties? Where is the boundary between normal and abnormal type? — In colloquial speech, it may be legitimate to resort to the term " normal type "; but scientifically, the formula expresses little more than an attempt to discover some arithmetical average in the vast number of psychic variations, racial types, individual characters, specific temperaments and independent frames of mind.

139. " Criminal Type." Turning from these general considerations to the proposition in which criminology is primarily interested, that is, the existence or non-existence of a so called *criminal type,* it must be admitted that among habitual delinquents there is a marked tendency of developing uniform practices and standardized habits.

Reiterating our statement on the subject (Chapter II, §§ 44, 46, 50), it may be said that criminals, forming part of lawless gangs, do possess many peculiarities *typical* of the particular line of the anti-social activity in which they are engaged. Likewise, recidivists usually adhere to an unwritten " moral code " of their own, while the individual transgression of their " common law " is bitterly resented by the other members of the underworld. In this, however, they do not differ in the least from persons belonging to respectable professions, who also

acquire definitely fixed customs peculiar to their occupation, and conform to what is known as professional ethics.

Still, the phenomenon of group cohesion is remote from the conception of *type*, in the sense some criminologists and anthropologists sought to use the term. Whatever characteristics have been described and referred to in order to justify the contention of the existence of the "*uomo delinquente*," or even of "criminoloids" (in the Lombrosian interpretation), proved to be inconclusive and indeterminate *par excellence*.

Charles Goring's brilliant discussion of this subject is well known. He has called the attention of the scientific world to the fact that most anthropometrical and anthropological "proofs" brought in support of the alleged existence of a "criminal type," so far, have been methodologically fallacious and statistically unreliable. On the latter point, he said the following:

"To be explicit, we assert that the recorded results of measurements made in the past upon criminals are practically *all of them valueless*, for the following reasons:

1. Because the raw material from which the means have been calculated has not been published, a fact which prevents any critical examination of the statistical results achieved;

2. Because their probable errors have never been given with the recorded mean, *i.e.*, no measure has been presented of the numerical limitations of the data whereby the calculated mean may be expected, with definite probability, to differ from the true value of the mean, to a greater or lesser extent; and the absence of statement as to probable error renders any statistical result entirely nugatory for comparative purposes;

3. Because no measure has been obtained of the variability of the series of measurements whose mean value alone has been investigated;

4. Because the attempt has only rarely been made to estimate the extent of, and properly allow for, any effects upon the measurements due to differentiations in age, stature, intelligence, etc., of the contrasted populations under measurement;

5. Because any possible discrepancies due to the personal equation of different observers have been entirely disregarded. For these reasons, although much apparent unlikeness has been shown, we cannot admit that any real differences have hitherto been proved by the

results of measurements made upon the criminal, and those made upon the non-criminal classes." [7]

Having, himself, made an exhaustive statistical study of the physical characteristics of the English convict, Goring came to this conclusion:

"The physical and mental constitution of both criminal and law-abiding persons of the same age, stature, class and intelligence are identical. *There is no such thing as an anthropological criminal type.*"

How conspicuously vague and casual the anthropometrical data on the "criminal type" are, may be illustrated by Lombroso's account of the so called "occipital dimple." He found it to be present in 16 per cent of criminals examined by him, as compared with 5 percent among non-criminals.[8] However, it was later observed that this peculiarity appears in following percentages among:

Mentally deficient	10–12
Prehistoric races	14
American Indians	26
Arabs and Jews	22 [9]

To this is should be added that criminality among the Arabs in North Africa is much less pronounced than among Europeans. Moreover, even if we should establish the fact that *all* criminals possess "occipital dimples" this would certainly add little to our knowledge why they became criminals.

140. Genetics and the "Criminal Type." Professor A. Franklin Shull quite correctly remarks:

"If a 'born' criminal could be recognized by certain characteristics, it might become possible to differentiate with respect to their treat-

[7] See Charles Goring, Deputy Medical Officer, H. M. Prison, Parkhurst, "The English Convict, A Statistical Study," pp. 28–30, London, 1913. Compare this with the observations of Dr. L. Sheinis, in his book, "Problems of Criminology and Social Psychology," pp. 106–114, Paris, 1926. (In Russian.)

[8] See his article "*Fossette Occipitale*," *Revue Scientifique, 1874*, p. 575.

[9] Compare G. Tarde, "*La Criminalité Comparée*, pp. 13, 14. Eighth Ed., Paris, 1924. On the subject of the psycho-physical symptoms of the "criminal type" consult Ferri, *Op. Cit.*, pp. 125, 167, where he makes an attempt to evolve what he terms a "natural classification of criminals."

ment between such individuals and those whose offenses were due to extrinsic influences. A criminal type has been claimed by some students to exist, marked physically by heavy jaws, peculiarly shaped skull, asymmetrical face, ears without lobes, sharp or flattened nose depending on the kind of crime indulged in, sparse facial hair, shifting eye, etc. Some have believed that murderers, for example, are distinguished on the average from criminals of other sorts by such physical characteristics. Careful statistical studies have shown, however, that a criminal type defined in such terms as the above does not exist." [10]

Nor does the general theory of heredity, as expounded by Mendel, Bateson, De Vries, Weissmann, Punnet, Sinnot and other students of genetics, help to substantiate the hypothesis of innate criminality even in its modified interpretation, as the endeavor to establish specific physical peculiarities among larger and professionally united groups of recidivists, for instance, murderers, thieves and forgers. While it may be true that among murderers, more robust individuals are found than in the category of those professionally engaged in forgeries, yet, in the first place, this distinction is rather vague, and, secondly, in the author's own practice he has dealt with a number of murderers whose physical constitution was conspicuously weak and undeveloped. The two world-famous literary types of murderers — reference to which has been made in this volume — Smerdiakoff and Raskolnikoff, according to Dostoievsky, were physically deficient. Furthermore, many crimes entailing either an attack on a person or constituting a grave menace to property, are *very often* perpetrated by women (murder by poisoning) and children (arson-pyromania).[11]

It must be clearly understood that both purely physical and psycho-physical features can be, and actually are being, transmitted genetically and thus inherited. Such traits as the color of the skin, shape of the hair, the dominant factor of tallness, different forms of physical destitution (syphilis, polydactylism) [12] as well as mental or neural diseases of certain classes

[10] See "Heredity," p. 191, New York, 1926.

[11] See Dr. Albert Moll, "The Sexual Life of the Child," pp. 217–218, New York, 1921.

[12] The problem of heritability of acquired diseases is not yet solved by science. For instance, it has been questioned whether tuberculosis is being in-

denoted in legal language as *dementia naturalis* — (idiocy, dementia precox, epilepsy), can be handed down from one generation to the other either directly, or indirectly, as a result of atavism, the nature of which is not yet fully comprehended by biology.[13] On this point there is disagreement among genetists.

141. Inheritability of Acquired Properties. On the other hand, however, there are many psychical elements, especially mental faculties as well as physical characteristics which, *being fixed to the particular individual,* and, as it were, static, are incapable of transmission to the immediate descendants by virtue of purely biological factors constituting the heredity process.

Professor H. S. Jennings makes an important observation, when stating:

"... Characteristics are not inherited at all; what one inherits is certain material that under certain conditions will produce a particular characteristic; if those characteristics are not supplied, some other characteristic is produced." [14]

Among other uninheritable symptoms, are, for instance, mutilations artificially inflicted upon the individual. Weissmann's well known experiments with mice presents conclusive proof of the static nature of these variations.

It will be recalled that he cut off tails of these animals for nineteen successive generations in order to determine to what extent, if at all, a specific injury is subject to reappearance in

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herited by a child born from tubercular parents. On this subject we read the following: "The heritability of other acquired diseases, as such, can rarely be established, since it is difficult to eliminate the possibility of infection of the embryo or new-born young by the mother. Early infection probably accounts for the frequent occurrence of tuberculosis in the offspring of tuberculous mothers, although in this as in similar cases it is possible that a predisposition or susceptibility towards a disease may really be inherited. There is also evidence that antitoxins and immune bodies, acquired by the mother, which increase her resistance to a specific disease or toxin may be transmitted to her progeny. The male has not this power, nor has such acquired immunity been shown to have been transmitted to more than one generation." See "Principles of Genetics," by Edmund W. Sinnott, and L. C. Dunn, p. 292, New York, 1925.

[13] On the subject of atavism see Professor Th. Ribot's, *Op. Cit.*, pp. 192–203.

[14] Quoted from L. Carmichael's article, "Development of Behavior," in the *Psychological Review,* Vol. 34, No. 1, January 1927, p. 45.

the descendant stocks. The result was emphatically negative: not only had Weissmann failed to breed a generation of tailless mice but he did not even observe any shortening in the sizes of the tails, or changes in their shape.

It seems probable that in order that inheritable mutations may be produced, the external factors causing them must affect the germ cell, more accurately, its chromosomes, for the nucleus of this cell contains chromatin, a substance commonly supposed to determine inherited characteristics. Naturally, an amoeba, or any other one-cell organism, is more likely to acquire an inheritable mutation than multi-cellular bodies, especially highly developed organisms, in which the germ cells are far removed from immediate environmental influences.

During the last two or three decades, much research has been devoted to the problem of the inheritability of acquired properties. In this connection, Kammerer's data on spotted salamanders attracted a great deal of attention on the part of professional scientists, mainly because it was found that changes in the pigmentation of salamanders were inherited by their offsprings. But the acquired color-patterns, which were obtained as a result of keeping these animals on black soil, were afterwards lost when they had been returned to normal colored backgrounds.

In the light of these facts, it is maintained that such environmental variations as are contracted by, or developed in, an organism may be genetically transmitted to the descendant stock; still, the modifying factor having been removed, the living body tends to recover the properties thus lost or modified. This phenomenon is corroborated by Stockard's observations on the effect of alcohol on guinea pigs, as well as different laboratory experiments with rats.

142. Inheritability of Delinquent Characteristics. Now, it has been pointed out that delinquency in the parents is most likely, in one way or another, to manifest itself in their children; and vice-versa, that among habitual criminals, there are many whose parents were either criminals or persons of mental debility.

Thus, Professor Shull, in discussing the interrelation of

crime and heredity, cites the fact that when the family history of 447 criminals was examined, it was found that among their parents 10% were criminals, 6% — victims of hysteria, 4% — of epilepsy, 15% — of alcoholism and 9% — of insanity.[15] Strictly speaking, these figures tend to bear out the general contention that unfavorable heredity is frequently encountered among the criminal strata of the population. But even this statistical survey demonstrates that only 10% of the parents were criminals, meaning that 90% were non-criminals. On the other hand, the indication of hysteria is one that requires further elucidation; it is a common experience that physicians sometimes use this term in cases of mild psycho-neuroses, which may be nothing but temporary mental conditions affecting a person who in other respects is healthy and shows no deviation from psychic normalcy.

Quite a different aspect is associated with alcoholism which, as will be later demonstrated (Chapter IX), causes fundamental changes in the entire neural system, and, if genetically transmitted, may, in various manners, affect the mental constitution of the descendant, facilitating the formation of criminal habits.

As a rule, morbid heredity does not originate *specific* psychopathological predispositions or mental diseases which can be precisely diagnosed; the derivative condition should be rather regarded as a state of inherent degeneracy, both physical and moral, the symptoms of which, some times, are difficult of definition. In other words, the genetic phenomenon in this field ought not to be treated in the concise Lamarckian sense of transmission to the embryo or progeny of certain morbid variations acquired by or present in the parents; nor in the terms of the Mendelian laws, but rather as a psycho-physical background which, under unfavorable circumstances, may, and often actually does, lead to a series of pathogenic manifestations in the organism of the descendant.[16]

[15] See A. Franklin Shull, *Op. Cit.*, p. 190.

[16] Professor F. H. Giddings, in his introduction to "The Jukes," referring to R. L. Dugdale's views on the inheritability of the delinquent proclivity, says: "The incontrovertible conclusion that Mr. Dugdale's investigations establish, then, is this: The factor of 'heredity,' whatever it may be, and whether great or

Individuals, coming from badly tainted stocks, are frequently endowed with morose and conspicuously irritable temperament. Alcoholic heredity is responsible for the hypochondriac frame of mind, egocentric disposition, epilepsy (not always in its classical form), feeble-mindedness, and general motor weakness.

In other words, it seems that heredity alone is incapable of accounting for the fundamental modes of human behavior. Neither the psycho-physical element, *in se,* nor the social factor, *in se,* can determine the laws of man's conduct; but the combination of those two factors, permeating each other, we believe, does to a large extent explain the nature of the phenomenon of behavior. As Professor Leonard Carmichael puts it:

"This hypothesis holds that *all* behavior is the result of the *interdependent,* but not necessarily equal activity of certain factors which may be classed as hereditary and those factors which may be classed as environmental."[17]

143. Heredity and Environment in Criminality. However, in many cases of delinquency where some writers seek to detect the condition of morbid heredity, the criminal propensity is due to environmental data and *not* to any physical characteristics either in the criminal himself or his ancestry. Thus, a child of a prostitute, brought up in an atmosphere of moral neglect and depravity, whose education is not only ignored but deliberately perverted, and who, from his early days, witnesses vicious and anti-social conduct of his parents, is apt to choose the path of

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small, always has the coefficient, 'environment,' and if bad personal antecedents are reinforced by neglect, indecent domestic arrangements, isolation from the disturbing and stimulating influences of a vigorous civilization, and, above all, if evil example is forced upon the child from his earliest infancy, the product will inevitably be an extraordinary high percentage of pauperism, vice, and crime. Two or three rather important tentative conclusions are: Illegitimacy as such does not invariably entail viciousness or criminality in descendants; crime is correlated with crossing of vicious blood with a more vigorous outside strain; pauperism is correlated with close inbreeding of a vicious and weakened strain." See "The Jukes," pp. iv and v, New York, 1910. The problem of heredity, as formulated here, deserves most careful consideration, and it is noteworthy that Professor Giddings deems it necessary to emphasize the role of social environment upon the genesis of the criminal disposition.

[17] See Professor Carmichael's article above quoted, *Psychological Review,* Vol. 34, No. 1, January 1927, p. 46.

least resistance, and by imitating the facts perceived, may easily become a habitual criminal.

Here, then, social environment being the major agent in the formation of the specific egocentric inclination, the biological principle of heredity in no way can be considered the cause of the origination and growth of the criminal character.

If the phenomenon of crime is analyzed from the standpoint of its sociologic meaning, it becomes important to determine whether or not mental ability, and more particularly the special aptitudes of the mind, are inheritable. Should we come to the conclusion that the transmission of these psychic faculties is governed by some immutable biological law, then the presence of the anti-social disposition in the parents, invariably, would have to appear in their children, — a fact which would thus, to a large extent, account for criminality as a social actuality. The discovery of such a genetic rule, indeed, would be helpful, since it would greatly simplify the interpretation of the causes of recidivism and do away with elaborate psychological constructions.

144. Inheritability of Special Aptitudes of the Mind. Some writers of distinction, including Galton and Lombroso, took the position that both general mental characteristics and exclusive traits of the mind can be inherited. Several striking instances of reoccurrence of genius or talent in the genealogical lineage of one and the same family were cited by them:

Says Lombroso:

"The Bach family perhaps presents the finest example of mental heredity. It began in 1550, and passed through eight generations, the last known member being Wilhelm Friedrich Ernst, Kapellmeister to the Queen of Prussia, who died in 1845. During two centuries this family produced a crowd of musicians of high rank. The founder of the family was Veit Bach, a Presburg baker, who amused himself with singing and playing. He had two sons who were followed by an uninterrupted succession of musicians who inundated Thuringia, Saxony and Franconia during two centuries. They were all organists or church singers. When they became too numerous to live together and had to disperse, they agreed to reunite on a fixed day once a year. This custom was preserved up to the middle of the eighteenth

century, and sometimes one hundred and twenty persons of the name of Bach met at the same spot. Fétis counts among them twenty-nine musicians of eminence." [18]

Similar accounts can be rendered of many families in whose successive generations men devoting their labors to art, science and political life, had gained great renown.

But, while these observations cannot be disputed, they should not be used as arguments proving a general law or universal truth. As against the examples reported by Ribot, Galton and Lombroso, probably hundreds of other cases could be mentioned tending to show that mental characteristics and, more specifically — genius, are uninheritable. Here we shall refer only to the following instances:

I. *Peter the Great* had a son, — Alexis, whose mental constitution, temperament and moral character were the very antithesis of those of his father. Peter was a man of iron will, boundless energy, unusual intellectual ability and remarkable courage. He was violent and even cruel, when under the sway of passion; noble and good-natured, when dealing with a conquered enemy. Besides, Peter's physical strength was proverbial. On the contrary, Alexis was weak and hesitative, passive and inactive; slow in his mental responses, womanly in his general disposition and lacking both moral and physical courage.

II. *Wolfgang Goethe,* probably the wisest among the wise men of the nineteenth century, had a son August. Goethe, whose poetical genius may be equalled by that of Shakespeare, at the same time was an eminent scientist whose theory of colors may be considered the foundation of modern spectrology; his general knowledge of the history and theories of art was singularly deep. While he cannot be regarded as a noted painter, his concepts of the different schools of painting relating to the epoch of the Italian Renaissance, was all-embracing. — *None of these faculties was inherited by his son.*

III. *Alexander Pushkin,* the foremost poet of Russia, had a son bearing the same name. Pushkin-father, besides having produced a long range of poems whose artistic quality rivals

[18] Lombroso, " The Man of Genius," pp. 139–140, New York, 1914.

the best creations of Goethe, Shakespeare, Schiller and Lord Byron, was a historian of prominence. His critical ability was recognized even by the professional critics of his age. *With none of these mental characteristics was his son General Alexander Pushkin, Junior, endowed.*

IV. *Count Leo Tolstoy* had several sons, none of whom inherited either the literary genius or the philosophical mentality of their father.

V. In a well-known Russian family X. the father was a brilliant pianist, a composer of talent, a mathematician and an illustrious physician. His wife was a woman of extraordinary mental ability and artistic taste, being a singer, a pianist, a painter and a sculptress. From these parents two sons were born; neither became a musician; neither inherited the artistic disposition to any appreciable degree, and both sons manifested a conspicuous incapacity for mathematics. Moreover, in examining the further history of this particular family, it was found that the grandchildren inherited none of their grandparent's mental characteristics.

145. Absence of Biological Foundation of Inheritability of the Special Aptitudes of the Mind. Examples of this kind could be cited without end. In this way, it must be recognized that mental faculties and special aptitudes of the mind, while sometimes reappearing in the descendant stocks, are largely tied to the physical constitution of the particular individual, and, consequently, do not enter habitually into the range of symptoms which are likely to be genetically transmitted.

When dealing with the conception of *law,* the law of heredity in particular — not merely assumed for the sake of convenience but mathematically proved — then the general rule applicable to the transmission of certain properties through crossing and hybridization is found to be present in *all* instances, coming within the scope of the specific inquiry. When, for example, Mendel, experimenting with peas, found the inheritance of alternative pairs of character to have the effect of producting *exactly* three sorts of individuals: 1. dominants which bred true; 2. dominants giving both dominant and recessive offsprings in the fixed ratio of 3:1, and 3. recessives which *al-*

ways bred true; and, further, when these results of the cross in successive generations were found *invariably* to be true in *all* instances examined, — then it can be justly maintained that we are confronted with a permanent causative relationship which can be recognized as a biological *law*.[19]

But no law can be derived when facts under observation demonstrate nothing but contradictory evidence; when most scrupulous statistical calculations and exhaustive clinical research provide the scientist with a long range of data mutually excluding each other. Such precisely is the situation with the phenomenon of genetic transmission of mental properties. If in five hundred cases out of one thousand, we can trace the reoccurrence of musical talent in several successive generations, while in the remaining five hundred cases no such fact can be perceived, then it cannot be asserted that the musical aptitude is inheritable as *a matter of biological law*.

146. Acquired Characteristics of the Anti-social Propensity and Criminal Disposition. For criminology, this consideration is of momentous importance in that it undermines the anthropological contention of the " born criminal " in the sense of a child having inherited the anti-social propensity and thus possessing, at the very birth, the mysterious faculty of becoming a recidivist at the age when he can be legally recognized as such.

There is a further difficulty connected with the hypothesis of the existence of " born criminals." Crime being *prima facie* a sociological relation between the transgressor and the social order, is essentially a *relative* conception; its inner meaning varies in accordance with the changes in the mental and moral philosophy of every nation. What today is considered a crime, tomorrow may be regarded as legitimate. What in one state is construed as the foundation of the social order, — in a neighboring country may be repudiated and denounced as criminal.

[19] Compare R. C. Punnett's "Mendelism," p. 18, Sixth Ed., London, 1922. The same principle, of course, is true of any natural law: so, when it is stated that the number of molecules in equal volumes of all gases, under identical conditions of temperature and pressure, is equal (Avogadro's law), it is meant that in *all* instances when two volumes of gases are measured, every gram-molecule of the substances compared contains the same number of molecules, regardless of the nature of the gases involved in the experiment.

Furthermore, the same act, for instance, of killing a person, in one and the same state during one and the same period of its history, sometimes, may be classified as murder in the first degree, and punishable by capital penalty, while in other instances it may be interpreted as justifiable homicide (compare Sect. 1044 with Sect. 1055 of the Penal Law of the State of New York), and not punishable at all.

Thus the constituent meaning of crime presents no other permanent symptom, save that every transgression is a punishable conflict between the individual member of society and the social order, — a transgression willfully originated by the former and violating a precise prescription of the latter. With the exception of this generic aspect, crime, in its ideological sense, is, always has been, and always will be in the future, a relative notion derived from the sum total of moral ideas, economic conditions, social standards, geographic environment and racial characteristics, all of which, in turn, convey to the given social order a specific constitution.

The desire of perpetrating a deed which is so indeterminate, obviously, cannot be inheritable or capable of being genetically transmitted.

The delinquent impulse which, as we have been maintaining, is closely affiliated with the egocentric emotions of man, is not a congenital state, but an acquired disposition which prompts the criminal to deliberately ignore, persistently undermine or shrink from the social order to which he belongs. The criminal propensity, then, is a habit; the mechanism of its formation is similar to that of the formation of any other habit. It is this problem, therefore, which should occupy the focal attention of the criminologist, — not the arbitrary assumption of inheritability of something uninheritable.

147. Biological Elements of Human Behavior. The sociologic features of the origination and growth of the criminal habit have been dealt with in an earlier part of this treatise. It now becomes necessary to examine the psycho-physical nature of human conduct in order to form a clearer conception of the complex mechanism requisite to the crystallization of habits in general and morbid dispositions in particular.

Human behavior in its biological aspect, is governed by three fundamental factors which are not only interrelated, but mutually permeate each other. They are:

I. Physiological constitution,
II. Psychic faculties of man, and
III. Psycho-physical symptoms which, although forming a group by themselves, may belong, now to the first, now to the second class.

Some distinguished thinkers, like Professor Knight Dunlap, seek to make the habit formation altogether dependent upon instinctive foundation of the organism, thus reducing the phenomenon to a purely bio-automatic process. We shall later see that such, in reality, is not the case, since the course of habit formation, in addition to the instinctive symptom, may entail distinctly rational and, in no way innate, elements, connected not only with the phenomenon of associative memory, but also some higher mental operations.

In examining the mechanism of human conduct, both in its social and anti-social aspects, it was found (Chapter III, § 65) that, to a considerable extent, it is governed by habits. But habits, themselves, are crystallized effects of the compound influence of four principal elements:

a. Fundamental Desires,
b. Instincts,
c. Temperament,
d. Character.

The psycho-physical nature of crime cannot be properly understood if these factors of individual behavior are ignored. We shall now briefly review their respective role in the process of habit-formation.

A. *Fundamental Desires*

148. Fundamental Desires. That strictly physiological characteristics must strongly influence human behavior is self-evident. Most of our generic or primitive desires, together with the delicate framework of impulsive-repulsive emotions, are

founded upon the chemical composition of our body and its anatomic constitution.

As a starting point of our inquiry we shall refer to the desires, proposed as fundamental, by Professor Dunlap, adding to his list such desires as, in our judgment, are of vital importance to the correct understanding of many acts perpetrated by the human animal.

The emotional character of human cravings is a commonly recognized fact, and it seems that to every emotion of impulsion (desire of food) there is a corresponding emotion of repulsion (against hunger). In the table below the primitive desires are enumerated: it must be borne in mind, however, that the desires listed under 7, 8, 9 and 10, chronologically, become apparent, not simultaneously with but shortly after birth. With reference to speech, there should be drawn a line of demarcation between the articulation of disconnected and meaningless sounds, such as screaming, crying, smacking, — and the utterance of words, which comes at a later, and yet very early, stage of the development of the human organism, pre-supposing cerebral integration, on the one hand, and the crystallization of the imitative instinct — on the other.

With these modifying remarks, the list of our fundamental longings may be drawn as follows:

Generic Desires:

1. Of aliment (food and drink),
2. Of light and air,*
3. Of excretion (to be rid of disturbing, or sometimes merely superfluous, things),
4. Of rest,
5. Of activity,
6. Of shelter,
7. Of speech,*
8. Of association,*
9. Of conformity (adherence to the social rhythm),
10. Of sex gratification.[20]

[20] Asterisks show the desires omitted in Professor Dunlap's list. On the other hand, we found it necessary to exclude the desires of preëminence and progeny from the original enumeration (Prof. Knight Dunlap's "The Elements of Scien-

The fact must be emphasized that only two out of the ten fundamental longings, namely, the desire of association and the desire of conformity, are not directly derived from the dependent upon the existence and functional coördination of various organs, such as the urinary system, sexual organs, the alimentary canal, and so forth. These and many other visceral organs, thus, predetermine the origination of most of our primitive desires which, to a large extent, are automatic responses to the work of the physiological apparatus as a whole.

It is largely due to the efforts of the "behaviorist" school of psychology that modern science is beginning to pay more attention to the physical and objective elements in human conduct. In this connection Dr. Watson's ideas are quite typical of the new trend of thought in the field of psychological research. Describing the picture of a child's behavior, he says:

"At birth or soon thereafter we find nearly all of the so called clinical neurological signs or reflexes established such as the reaction of the pupil to light, the patellar reflex and many others. We find the birth cry followed by breathing; the heart beat and all circulatory phenomena, such as vaso-motor constriction (decrease in diameter of vessels) and dilatation, pulse beat, etc. Beginning with the alimentary tract we find sucking, tongue movements, and swallowing. We find hunger contractions, digestion, necessitating glandular reactions in the whole alimentary tract, and elimination (defecation, urination, sweat). The acts of smiling, sneezing, hiccoughing belong in part at least to the alimentary canal system. . . .
We find general movements of the trunk, head and neck best observed so far as the trunk is concerned when the infant suspends himself with the hands. Rhythmical 'climbing' movements then appear. We can see the trunk at work in breathing, when the infant

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tific Psychology," p. 324, St. Louis, 1922), since, in our judgment, these are not primitive but compound desires which appear at a later period of human life. Referring more particularly to the progeny desire, it seems clear that not only the new-born baby, but even a child of two or three years, does not exhibit a distinctly constituted parental longing. The first, rather vague symptoms of such a desire may be, perhaps, registered in little girls usually having reached the age of 4 or 5, when they begin to play with their dolls, "caring," "dressing," "feeding" and "entertaining" them. Still, it is doubtful whether even this phase of the child's behavior indicates the desire of progeny, because it is probable that, at least, some manipulations with these toys take their origin in the desire of association and are caused by the instinct of imitation.

cries, during defecation and urination, when turning over or when the head is raised or turned." [21]

Here, then, we perceive the human organism "behaving" as a result of the physical constitution itself. The child moves, acts and reacts, not because of any mental operations which could be described as planning or deliberation, but merely owing to the fact that the very functioning of the organs and their physiological arrangement preordains a number of primitive desires and automatic movements.

Owing to the existence of this equipment, the human being, from his earliest days, experiences primitive longings such as mentioned above, and it is also because of the presence of this physiological material that the human animal "knows" how to meet and gratify the innate desires thus originated.

Still, were our body to perform only these elementary movements, producing nothing but mechanical responses, — human behavior would not differ much from that of an amoeba; whatever distinction between the two might be noted would amount to a quantitative and not qualitative difference. In other words, the number of such reactive manifestations would be larger in the case of the human organism, but these would be just as unconscious and devoid of psychism as in any one-cell creature.

But the human organism, owing to its highly developed and infinitely complex neural system, is capable of performing a vast number of acts which are not mere automatic responses to bio-mechanical stimuli, but which, refracting through the prism of our conscious *ego,* and emanating from the cerebro-integrative centers, produce highly organized synthetic functions, with volition and cognition serving as their directing agencies. Of these acts and states the psychic life of man is composed.

B. *Instincts*

149. Instincts and Their Nature. When this phase of human conduct is examined, it is found that, before thought can reach the higher planes of reasoning, it meets on the path of its development a series of innate *tendencies or instincts,* which

[21] Dr. John B. Watson, "Behaviorism," p. 103, New York, 1925.

stand on the borderline of the blind functions of the organism with its unconscious and subconscious states, — and the different degrees and modes of consciousness, including intuition and ultra-rational knowledge.

On the nature of instincts there is still great diversion of opinion among men of science.

a. Some writers, like the "behaviorists," are inclined to deny the very existence of innate tendencies; they seek to evolve a theory of human conduct, diplomatically eliminating the discussion of this subject; and whenever, by force of logic, they nevertheless are compelled to mention it, they make all kinds of excuses, explaining to their readers that "the whole concept of instinct is academic and meaningless." [22]

b. This negative theory is by no means commonly accepted, and most psychologists, in our day, continue to retain instincts in the classification of psychic phenomena. However, many thinkers, basing their views on the Spencerian conception of instincts as compound reflexes, maintain that the cognitive process does not enter at all into the formation of the instinctive act. Carl Groos, among others, believes that instincts, being confined to the conative function, are entirely devoid of the element of perception. To the same class should be added the theories of Loeb, Rabaud and Piéron — deriving their fundamental notion of the nature of instincts (whether they employ this term or not) from the chemo-physical constitution of the organism and the phenomenon of "differential sensibility." [23]

[22] It has been recently suggested by Max Schoen that the term "instinct" be altogether banished from the domain of psychology and that in its stead the expression "forms of native behavior" be introduced. Why this change should be considered advantageous or substantially modifying the theory of instincts, the author fails to comprehend.

[23] See J. Loeb, "*La Conception Mécanique de la Vie,*" French Ed., Paris, 1914, Rabaud, "*Eléments de la Biologie Générale,*" Paris, 1920, Piéron, "*Les Problèmes actuels de l'Instinct,*" *Revue Philosophique,* October 1908. The Russian mathematician, N. Umow, seems to have confounded the conception of instinctive acts with pure automatism which, according to his theory, is the manifestation of a general tendency observed in nature seeking to gradually convert conscious activity into automatic. Umow further maintained that while instinctive behavior, in every specific instance, is devoid of the conscious element, the origin of such acts in the remote past must have been derived from the purposive operations of the mind striving to adapt itself to the different needs and conditions with which the living organism became confronted. The modes of meeting such needs, then, are not unlearned responses, but something

c. On the other hand, the psychological school of which Professor McDougall is the most eminent representative, not only retains the instinct in the enumeration of the mental characteristics of man, but endeavors to show that " every instance of instinctive behavior involves a knowing of some thing or object, a feeling in regard to it, and a striving towards or away from that object." [24] Consequently, these writers ascribe to the instinct three distinct qualities: *a.* cognitive, *b.* sensory-reactive and *c.* teleologic.

d. Finally, to the fourth group belong those students who also seem to believe that in the human animal instinctive reactions are conspicuously conscious and, at least, partly volitional, but who, none the less, confound with instinctive impulses such acts as are manifestly unconscious and non-volitional. Thus, Professor Dunlap, in one instance, states:

". . . we find that in man, instinctive reactions are characteristically conscious, and many are volitional; and we are therefore forced to admit the possibility that in the lower animals, *if* they have consciousness, instinctive reactions are conscious, and *if* they have volition, some of their instinctive reactions are volitional." [25]

However, speaking of a new-born babe, he makes this observation:

" Normally, it cries, as soon as the cold air strikes it, or a brief time thereafter. If it did not cry, it would strangle. Perhaps the effective pattern is the coldness and the incipient asphyxiation, which together initiate the reaction which clears the respiratory passages of fluids. *Now this reaction is instinctive* and is sometimes spoken of as *an instinct.*" [26]

Still, the crying of a new-born baby obviously is not an act which we would be justified in denoting as conscious.

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that has been conceived and genetically transmitted to the descendant generations which, on their part, continue, in an *automatic* manner, to adhere to the functions elaborated by their ancestors. See N. Umow's article, " Automatism and Conscious Activity," in his *Opera Omnia,* Vol. III, pp. 210–217, Moscow, 1916. (In Russian.)

[24] Professor William McDougall, " Social Psychology," p. 27, Rev. Ed., Boston, 1926.

[25] See his *Op. Cit.,* p. 221. Italics ours.

[26] *Op. Cit.,* p. 215.

With good reason, this writer introduces the notion of *incomplete* instincts, but he does not seem to carry his conception to its logical end by differentiating the undeveloped innate tendency from the *completely constituted instinct*. In our opinion, however, the two phenomena belong to two *distinct* regions of our bio-psychic apparatus. To this question we shall have to return later.

150. Sociologic Conception of Crime and Instincts. Reflexes. The sociologic meaning of crime makes it absolutely necessary to examine the different theories of instincts in order to determine the place of innate tendencies in the aetiology of human behavior, mainly — in its anti-social or criminal aspect. At the same time, because instinctive acts are often mistaken for, and confused with, reflexes, it may not be out of place to explain the difference between these two groups of biological phenomena.[27] To the discussion of this subject we shall now turn:

The "behavioristic" attempt to eliminate instincts from the field of factors moulding behavior in general, and human conduct in particular, is at variance with facts: every-day-experience furnishes overwhelming evidence to the effect that organisms, both primitive and highly developed, possess innate faculties to react to certain stimuli not only in a stereotyped, although unlearned, manner, but in such a way as to make the mechanism of the response serve a specific biological aim.

When these organic faculties or tendencies evince a definitely organized teleologic and durative nature, we speak of the phenomenon of *instincts,* as distinguished from *partial* automatic responses — *reflexes* of the sensory-motor region, observed in different muscular contractions of the upper and lower extrem-

[27] Max Schoen, of Carnegie Institute of Psychology, in a recent paper "Instinct and Man" thus formulates his conception of the term "instinct." "We should utilize the term to designate not specific forms of native reactions, but that phase or aspect of behavior, as a whole, which precedes learning. *'Instinct' is a general term for native behavior, and nothing more.*" (Psychological Review, Vol. 34, No. 2, March 1927, p. 120). Were such a broad definition correct, the conclusion should be drawn that the sum total of physiological functions, including reflexes, the work of our visceral organs, etc., which certainly precede learning, and constitute "native behavior," belongs to instincts in the sense set forth by Schoen. Such functions, however, are neither determined by environment nor dependent upon training which symptons, according to the same author, are most typical of human behavior.

ities as well as in our vegetative system. Such is, for instance, the knee-jerk in which the pathway of the reflex, starting below the patellar tendon, extends to the leg-muscle, without reaching the spinal ganglion and the brain centers. Cerebral activity is involved only in the perception of the contraction but not in its origination. The Babinski and the Strumpell reflexes (extentions of the great toe) are often cited as examples of similar functional responses.

The whole range of reflexes clearly belongs to the province of physiology and *not* psychology, although the exaggeration or absence of certain reflexes, (like the spinal reflex), may have a symptomatic importance in the diagnosis of various psychopathological states involving the degeneration of cerebral neurones (polyneuritis, tumors, etc.). In their quality of purely physiological functions, neither directly caused by nor exercising an immediate influence upon the integrative work of the cerebrum, — reflexes do not enter into the aetiology of human conduct in the sociological meaning of the term.

On the contrary, instincts occupy a position of singular significance in the formation of individual habits, and, therefore, are of momentous importance to both sociology and criminology.

The conative nature of instincts seems to be generally recognized by science, notwithstanding the difference in the method of their classification. Following the example of James as well as of some authors belonging to the German school of psychology, various attempts were made to present exhaustive tabulations of human instincts and compound longings having innate tendencies as their chief source. From the standpoint of criminology these learned and most interesting deliberations are but of secondary significance, the principal point of interest being confined to the realization and admission of the fact that many acts of the human animal have the instinctive impulse or impulses as their causative foundation.

151. Two Fundamental Classes of Instincts: a. Self-preservative and b. Reproductive. In the early days of this century Professor Leo Petrajitzky in his "Theory of Law."[28] suggested that all human instincts, for practical purposes of

[28] St. Petersburg, 1907. (In Russian.)

psychological analysis, be reduced to two fundamental categories: *a.* self-preservative and *b.* reproductive. A similar recommendation has been more recently made by Professor Dunlap, and, for the moment, we can very well accept this physiological classification, since it is undeniable that most of our innate tendencies are calculated to meet the needs of either self-preservation or reproduction (preservation of the genus).[29] At a later stage of our investigation, however, we shall introduce a third subsidiary group of instincts, which, as will be seen, plays an important role in the formation of criminal habits.

152. Cognition in Instincts. The question whether or not the cognitive element is requisite to the conception of instinct, appears to be the primary difficulty confronting the majority of theories relating to instincts.

When reference was made to the phenomenon of the tropisms (Chapter V, § 93) it was found that in lower organisms, including plants, there are innate tendencies or faculties enabling these living units to respond, in a specific manner to specific stimuli, such as photo-mechanical factors, chemical influences and the basic condition of gravitation (geo-tropism). The responses produced by these outward agents invariably serve some well-defined, or at least ascertainable, purpose which tends to preserve: either the individual organism as such, or the result of its reproductive functions. The tropisms, of course, do not involve the conception of psychism for the mere reason that among these inferior species, whether zoölogical or botanical, there is nothing suggesting the existence of a developed nervous system with which the psychical phenomena are associated and upon the presence of which they are dependent.

Still, in the biological fact of tropisms, with the cognitive symptom altogether eliminated, we perceive marked innate tendencies whose effect is similar to that associated with in-

[29] This being a treatise on criminology and not psychology, it is not necessary for us to go into more detailed discussion of the different theories of instincts. Those interested in this particular subject should consult the classical work of Professor James "Principles of Psychology," Vol. II, pp. 382–441, as well as the most enlightened study of the nature of instincts and general innate tendencies in Professor William McDougall's "Introduction to Social Psychology," pp. 20–124, and "Body and Mind," Chapter XIX, pp. 258–271, — on "Mechanism and Animal Behavior."

stinctive acts observed in higher zoölogical classes, including the human animal.

Leaving aside other mammals and concentrating our attention on human instincts only, we find the following: the new-born baby manifests certain tendencies, justly considered instinctive, while the responses to such longings are *unlearned*, and, therefore, must be innate. They serve one of the two chief biological purposes — self-preservative or reproductive (sometimes both), thus possessing a clearly discernible *objective* character.

Nevertheless, the crying of an infant, the sucking, primitive rhythmic emotions,[30] and the like, while clearly belonging to the region of instincts, — are devoid of the *cognitive* element. This is due to the fact that ideation is correlated with the process of myelinization in the medulla nerve fibers and the cerebral hemisphere, which requires time, and its amplification is gradual, developing step by step. Flechsig succeeded in demonstrating that the process lasts from the end of the seventh month of the embryo's existence until the fifteenth month after the child's birth. Thus, the faculty of integration, and its early synthetic symptoms revealing themselves in the phenomenon of the associative memory, are largely conditioned upon the formation of myelin in the cerebral regions.[31]

Here, then, we are met with instinctive acts which are not conceived by the mind; they are blind, although objective responses. They serve a biological purpose which is not recognized, as such, by our mental apparatus; they are subconscious because consciousness as yet is non-existent. The operations of the intellect, at this stage of psychic life, are limited to mere perception, while the stream of disconnected impressions from without is mechanically stored in the brain but not fused into concrete ideas or abstract conceptions.

[30] See, Chapter V, § 94.

[31] See W. Bechterew, "*Les Voies de Conduction du Cerveau et de la Moelle*," p. 631,, also p. 3, Paris, 1900. Yerkes was among the first to have systematically examined the symptoms and functions of what Loeb denoted as associative memory with regard to the lower zoölogical species. His experimentations with frogs have demonstrated the fact that habit-formation among these animals is dependent upon the repetition of certain acts which lead to specific experience, as a result of which a frog acquires not only *general* but sometimes even *individual* habits. See Georges Bohn, *Op. Cit.*, pp. 227–231.

Because of this general condition it would be improper to attribute to instinctive acts, in this phase of their development, any symptoms of cognition, or even conation, unless we should use the latter term in the sense of Schopenhauer's "*unbewusster Wille*" (unconscious will).

Furthermore, some of these inherent tendencies die away before cerebral integration enters at all into our mental functions. Thus, while preserving to the last moment their predetermined vital end, they *remain* submerged in our subsconscious realm.

153. Instincts and Sub-instincts. It is for this reason that we distinguish the group of these blind innate tendencies, correlative to specific biological objects, from instincts in the habitually accepted meaning, associated with the conceptions of conation and cognition.

These unconscious longings, then, may be denoted as *sub-instincts*.

Virtually every instinct, before it can be acknowledged as such, passes through a period of blindness. This fact finds its philological recognition in the classically graphic and precise Russian popular tongue which speaks of "*blind instincts*."

We observe the presence of innate tendencies in the human organism from its earliest days. In order that they may be adequately met, we also discern corresponding responsive mechanisms. But both the tendency as such and its responsive mechanism are *incomplete,* while their crystallization comes in consequence of two factors: *a*. the intervention of cerebral integration and *b*. the repetition or frequent perpetration of the responsive act.

Sub-instincts, which, as we believe, lack the cognitive element, constitute the *rudimentary group* of our innate tendencies. Every sub-instinct, however, may assume four different forms of development:

a. It dies, after having served the biological purpose for which it has been created;

b. It may continue to survive in the form of an automatic habit, after having served its biological aim;

c. It develops into a structuralized or complete instinct in which all the three properties, that is, — 1. "a knowing of some

thing or object, 2. a feeling in regard to it, and 3. a striving to or away from that object," are present. Harmonically improving and modifying the mechanism of their outward manifestations, such complete instincts form a solid basis for the acquisition of certain, but by no means, all human habits, and *d*. The crystallized instinct, having served its biological destination, dies away at a mature age.

154. Perverted Instincts. Criminology is interested in one additional feature connected with the development of some instincts which accounts for diverse perversions and thus may, in fact frequently does, — enter into the aetiology of crime. Among others, the sexual instinct, too, is first found in the human animal in a rudimentary state precluding cognition. The early subsconscious manifestations have been observed at a very young age. Dr. Watson, for instance, reports a case of masturbation observed by him in a girl who had scarcely reached one year. This writer says:

"Apparently a great many of the muscular responses later to be used in the sex act such as pushing, climbing, stroking, are ready to function in the male at least at a very much earlier age than we are accustomed to think." [32]

Equally, Dr. Kempf refers to vague sex symptoms recorded by him among infants. His statements are most interesting:

"The *preadolescent* stage of childhood (three to ten) begins as the individual, now an embryonic personality, begins to compete with all the universe for the gratification of its autonomic cravings. Handicapped by its inferior organs and unskilled functions, it compensates for the deficiency with day-dreams, make believe, and magic, fairy fancies, bluffing, lying, etc. (the age of motor illusions). The natural erotic curiosity of childhood, blindly censured in almost every conceivable manner by prudish adults, is often forced to indulge in secret play. The polymorphous, imitative curiosity about the behavior of *parents*, animals, birds, insects, etc., and, particularly that which causes the most excitement, naturally, their sexual play, no doubt is of tremendous value as a dynamic influence for the acquisition of knowledge." [33]

[32] *Op. Cit.*, p. 92.
[33] Dr. Edward J. Kempf, *Op. Cit.*, p. 130, St. Louis, 1920.

The very inferiority, rather the underdevelopment, of the sexual organs, and the genital receptors in particular, conveys to the sex sub-instinct during babyhood a character of incompleteness. The inborn tendency is there; but being, for the moment, incapable of consummation, it acquires, under the sway of unfavorable circumstances, a perverted orientation which in the adult may reach the degree of a distinct psycho-physical anomaly (*psychopathia sexualis*), or become a criminal habit.

The normal growth of the sex sub-instinct, and the eventual formation of the sex instinct, are essential to the biological principle of reproduction. Nevertheless, the premature participation of these sub-instinctive emotions in the human conduct, and especially their artificial cultivation, being contrary to the laws set by nature herself, usually lead to disastrous consequences.

155. Instincts and Imitation. Tentatively it was agreed to adhere to the division of all instincts into two classes — the self-preservative and reproductive. But the point has been reached when it seems appropriate to introduce in our discussion the third subsidiary group of instincts, namely, the *imitative* tendencies, which are psychic phenomena *sui generis*.

The instinctive nature of imitation has been questioned by some authors. So, Professor McDougall formulated the reasons for refusing to recognize imitation as an instinct by itself, as follows:

"Imitative actions are extremely varied, for every kind of action may be imitated; there is therefore nothing specific in the nature of the imitative movements and in the nature of the sense-impressions by which the movements are excited or guided. And this variety of movement and of sense-impression is not due to complication of a congenital disposition, such as takes place in the case of all the true instincts; for this variety characterizes imitative movements from the outset. More important is the fact that, underlying the varieties of imitative action, there is no common affective state and no common impulse seeking satisfaction in some particular change of state." [34]

But, the same writer, in another place, speaking of the imitative movements of a child, states:

[34] William McDougall, "Social Psychology," p. 106.

"For the explanation of any such simple imitation of a particular movement at this early age, we have to assume the existence of a very simple perceptual disposition having this specific motor tendency, and, since we cannot suppose such a disposition to have been acquired at this age, we are compelled to suppose it to be innately organized. *Such an innate disposition would be an extremely simple rudimentary instinct.*" [35]

Now, a rudimentary instinct is still an instinct, and if we recognize the instinctive nature of imitation in one instance, there is no reason for denying it in another.

156. Biological Significance of Imitation. As a matter of fact, imitation, being a distinct category of psychic phenomena, belongs to those inborn propensities which have the greatest bearing upon the structuralization of other instinctive acts and habits, both social and anti-social.

Some of the fundamental desires mentioned in an earlier part of this chapter, being closely allied to the whole gamut of instincts, can be gratified only because the human animal is endowed with the instinct of imitation. This is particularly true of the desires of speech, association and conformity.

In this respect the following should be considered: it can be asserted that the phenomenon of psycho-genesis, little as we still know about its underlying causes, is a painfully slow process which, in the first instance, is confined to the accumulation of perceptions, the storing away of these primitive impressions and their gradual integration into modal concepts. But as the child acquires the synthetic faculty, he also learns to exercise control over those motor centers which have a direct influence upon the mechanism of articulation. However, the child soon discovers that a detached sound, in itself, is insufficient to interpret some of the experiences, primitive as they may be, that have been perceived in and integrated by his cerebrum. This point having been reached, the infant finds himself at the threshold of a new era of verbalism, when "digested" perceptions are converted into wordy symbols through the function of speech.[36]

[35] *Op. Cit.*, pp. 109, 110. Italics ours.

[36] According to the author's own observations, the formation of the speech function, derived from the unconscious articulation, is, in turn, allied to the

The baby's lisping, the unconscious articulations are transmuted into speech largely owing to the intervention of the instinct of imitation: the child begins to imitate the orderly and purposive utterance of sounds by adults, for whom he may have a tender feeling; he watches them speaking and finally grasps that a specific order of sounds results in specific mutual responses on their part. The desire of speech then becomes fundamental, while its gratification is facilitated by the acts of imitation.

At later periods, too, many desires can be properly satisfied only by means of imitating somebody else's conduct. Again, the innate but blind tendency in the form of a sub-instinct, may be present in the organism; but its outward manifestations, its practical applications being dependent upon the usage of certain organs, must be learned and imitated, whenever the nature of the response itself involves cognition.

In this way, it may be said that imitation, despite the great variety of the modes of its external expressions, performs a specific biological function, facilitating the transition of sub-instincts to complete instincts, consequently, playing the role of a subsidiary agency in the development of innate dispositions.

Taking further into consideration that many habits, both social and anti-social, are derived from the instinctive nature of man, it will be readily conceived why the subsidiary instinct of imitation occupies a key-position in the field of social relationships.

We are in full agreement with Professor Ernest Henderson who, referring to the socionomic significance of imitation, says:

"While it is possible that the formula of the 'circular activity' is not all-explanatory in the growth of human powers, and that the epigram 'society is imitation' is an inadequate account of this institution, nevertheless, these conceptions have unquestionably contrib-

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processes of: *a.* crying, *b.* smacking and *c.* sucking. Sounds caused thereby stimulate the auditory nerve centers of the baby, he *hears* and repeats them. Later he also learns that certain sounds attract the attention of those who take care of him (mother, nurse, father, etc.) and sometimes lead to gratifying sensations (in response to crying nourishment is given, and the like).

uted an enormous amount to the comprehension of mental and social evolution. The form of imitation is one of the simplest and most universal that the process of individual readjustment can take." [37]

157. Imitation and the Formation of the Criminal Propensity. More particularly, the phenomenon of habitual criminality, or recidivism, at least in its elementary stage, is largely caused by the factor of imitation. The child — we repeat — is not born a criminal; but at his birth he possesses, although in an embryonic degree, the whole scale of the fundamental desires, most of which actually belong to the egocentric order. For the satisfaction of these impulses, he is provided with: *a.* physical organs requisite to the performance of certain physiological acts and *b.* innate faculties or sub-instincts which suggest to the given organs *how* to function in order that a desire may be adequately coped with.

Not only during preadolescence, but also at the time of youth, the selfish principle naturally dominates over the social propensity, the latter entailing more intricate ideas and attitudes of the mind. The original or primitive impulses of the human animal are thus directed towards self-gratification in one form or another. This is a legitimate condition easily explained by the psycho-physical constitution itself.

However, when from early childhood, the infant constantly observes in his immediate surroundings (*entourage*) a long series of morbid habits, resorted to by adults, and especially by the parents, — the egocentric current, engrossed by imitative acts and finding no check in opposite emotions, assumes a strong anti-social direction.

Approximately between the ages of seven and sixteen the imitative dispositions and acts, steadily increasing in number and vigor, finally reach their peak. It is the period of physical growth during which the human animal hastens to form his habits and evolve the chief modes of his social conduct. But, owing to the fact that at this stage, his mental faculties are still conspicuously underdeveloped, and, therefore, hardly

[37] Professor Ernest Norton Henderson, "A Text-Book in the Principles of Education," p. 318, New York, 1923. The entire Chapter XI (pp. 318–358) on imitation is of utmost interest to the student of both sociology and criminology.

adapted to the origination of independent ideas, — he seeks to imitate the doings of those among the adults with whom he is in daily contact. It is *their* habits that leave the strongest impression upon his mind; it is *their* words and thoughts that mainly strike his imagination; it is *their* principles and convictions that, having been integrated in his intellect, become a sort of layer of his own basic vision of life in its manifold and many-colored aspects.

With imitative impulses there is usually associated an element of sympathy or instinctive attraction. The child imitates his parents not merely because he is living in their home, but equally for the reason that he experiences a natural love for them. There seems to be in the adolescent mind a strong presumption that whatever is being perpetrated by father and mother must be right. With mental growth this attitude may be — and often is — substantially modified as a result of the formation of the critical view which enables the mind to rid itself of conceptions imposed from without or borrowed from social environment. Still, this is something that comes later, being a symptom of approaching maturity, — a mark of self-reliance.

A child of a professional prostitute or a habitual criminal, who finds himself confronted with the wretchedly deficient conduct of his parents, unavoidably becomes affected by and infected with the germ of social disintegration. — It may be asked: Is there anything in the framework of the adolescent psychic constitution that would safeguard it against this contagion? Is there anything that would tend to prevent the child from copying the immoral or criminal behavior of his parents? Is there any stimulus which would prompt a child, brought up in the perverted atmosphere of turpitude and vice, to act differently from the ways of living exhibited by his parents? — To these questions the answer can be but negative, for in the mechanisms of the adolescent mind there is nothing that would help to divert the stream of egocentric emotions to the channel of constructive altruism.

The infant's mentality, despite, or rather because of, the imperfection of its constitution, is not only strongly impressed

by morbid scenes, but these dark images, even though submerged in the subsconscious *ego,* frequently persist in their influence throughout the years of maturity acting as pathogenic and criminogenic factors in the final production of the moral character. Dostoievsky wisely remarked:

"Children's souls witness sad pictures and become accustomed to powerful impressions, and these visions and sensations shall forever remain within them, and during the whole course of their lives they shall come back to them in terrible dreams."

The lasting condition produced by the early unwholesome experiences is accounted for by several reasons of which the most important probably is to be found in the fact that a child has but limited material to operate with in his mind. An impression penetrating his brain does not become beclouded and dispersed through, or in consequence of, other co-existent ideas, motives and critical considerations; it shapes itself into a vivid and monolithic mental image, — not as some of those misty and evasive landscapes of Corot, — but with lights and shadows graphically contrasting, like on the tragic canvases of Ribeira.

It is, then, altogether unnecessary to entertain ideas of occipital dimples and cranial bumps in order to comprehend why one child grows up and becomes a criminal, while another develops into a decent and law-abiding social animal. Once we have gained a clear understanding of the mechanism bringing about the habit-formation; as soon as its physical and psychic backgrounds have been correctly ascertained, there is no further justification for undertaking exhaustive pilgrimages to the unexplored realms of Lombrosianism.

C. *Temperament*

158. Temperament as a Factor in Human Conduct. Among the psycho-physical factors which have an important bearing upon the general "style" of individual conduct, is *temperament* which is usually defined as the conjuncture of psychic characteristics, with respect to the relative proportion of their different qualities, mainly dependent upon the physical constitution and the racial type of man.

The Latin saying "*mens sana in corpore sano*" raises the theoretical question of the interrelation of body and mind, expressing the fundamental idea that physical health and freedom from bodily pain are requisite to the state of mental vigor. This subject, in its gnosiologic aspect, rightfully belongs to the domains of psychology and philosophy. As for the criminalist, his interest in temperament is limited to the influence which it may exert upon the origination of the criminal tendency.

The inner contents of every individual crime comprises three distinct psychic elements:

a. General attitude of the mind towards the social order and the principle of transgressing its precepts (sociologic symptom);

b. The motive or *animus* of undertaking the specific offense (volitional symptom and practical considerations);

c. Attitude of the mind towards the perpetration of the specific offense (momentary mood and outward circumstances).

In the frame of mind of the recidivist, owing to the absolute domination of the egocentric tendency, the first element of the inner contents of crime is a *fixed,* although distinctly *negative,* attitude. The habitual criminal ignores the social order or experiences a bitter feeling of animosity towards the state, which is the living symbol of organized society. Therefore, the center of gravity in the mechanism of the performance of a habitual crime is shifted from the field of general considerations to the two remaining elements, that is, the *animus* and the attitude towards the perpetration of the specific offense. (See Chapter V, § 104).

It is a law that the more harmony and coördination there appears between the three elements making up the inner contents of crime, — the easier is the process of its perpetration.

On the contrary, in the casual criminal, the gregarious instinct being fully developed, there arises sometimes a painful conflict between elements *a* and *c*, the former seeking to suppress the latter, keeping individual conduct within the norms and standards of the social order. Here, the field of consciousness is split, as it were, in two rival camps, while the inter-

mediary member *b*, which is the volitional agent, joins either *a* or *c*, accordingly to the intensity of the stimulus itself and the nature of the contemplated act.

If we were to suppose that for the commission of the given crime the accumulation of not less than eight degrees of anti-social, or *minus*, energy be needed, and that *a* equals +5, *c* —3, and b—5, then, the psychic state expressed in the equation a+c+b=+5—3—5=—3, can produce no crime.

In order that the discharge of the anti-social energy may actually be caused, it would be necessary for any one of the following events to take place:

First — that the intensity of the stimulus (*b*) be doubled, the two other members of the equation remaining equal (a+c+b=+5—3—10=—8), or

Second — that with *a* and *b* remaining equal, the momentary mood (*c*) may grow in its compulsive power, attaining 8 degrees (a+c+b=+5—8—5=—8), or

Third — that both *c* and *b* increase in their intensity, to —5 and —8, respectively, — the first member of the equation (*a*) remaining equal (a+c+b=+5—5—8=—8), or

Fourth — that *a* suddenly becomes entirely neutralized or obliterated (as for instance, in a state of intoxication), — the other two elements of the psychic condition remaining equal (a+c+b=0—5—3=—8).

The fourth combination, however, is rather a hypothetical proposition, since the sociologic symptom, whether positive or negative, is a more or less constant element of the mind, the agents *b* and *c*, usually producing the quantitative changes in the trains of thought and the psychic states derived therefrom.

As observed, the third psychic factor (*c*) comprises two symptoms: 1. the conjuncture of the external circumstances surrounding the commission of the proposed delinquent act, and 2. the transient temper of the mind which is largely a subconscious emotional state depending upon different characteristics of our physical constitution.

159. Affective Tonality and Transient Tempers in Human Conduct. We ought to distinguish the general emotional back-

ground or *affective tonality,* which may be called constituent mood from those momentary psychic states — *humeurs passagères* — which are sometimes confused with temperament in its scientifically accepted sense.

We are aware of tempers casually provoked by seemingly insignificant events, trifling impressions from without, sudden reminiscences of facts forgotten and submerged in the obscure realm of our subconsciousness.

It frequently occurs that amidst some important work, when our mind is focused on the solution of an intricate problem, presently we hear a tune which we had known before; or we perceive a strange color that revives in our memory something we had seen in days gone by; or some delicate odor begins to reach us, — an aroma, suggesting a strong feeling that had been experienced, long ago; our subsconscious mind then precipitates the reconstruction of those things which are no longer, but which, for some reason, may have drawn a deep furrow in our *ego.* Now, the *mental image* is complete; it stands there vividly, as though it were *real,* and with it may come a sentiment of joy or sadness, and why — we do not know; but this emotion is very strong, indeed, although it may last but a moment.[38]

As a rule, these transient tempers do not affect the process of the habit-formation. Being momentary states they easily submerge and vanish in the darkness of *"das Unbewusste"* and — putting it in Oscar Wilde's terms — "the wonder of the effect with the strange simplicity of the material" disappears just as abruptly as it appeared in our mind. For this reason there is no need for analyzing them here.

There are, however, states of mind which justly belong to the phenomenon of temperament; they are moods, as it were, continuously pressing upon consciousness and conveying to our thoughts a steady orientation; they determine, to some degree, the modes of our responses to external stimuli.

[38] The mechanism of the formation of the mental image is a problem occupying much attention on the part of modern science. In the Barcelona Psychological Laboratory, Georges Dwelshauvers has been conducting many most interesting experiments in this connection, thus supplementing the previous studies of Dr. Pierre Janet of the phenomena of psychic automatism and affective tonality. On this subject, see Professor Georges Dwelshauvers' *"Les Méchanismes Subconscients,"* Paris, 1925.

160. Physiological Foundation of Temperament, a. Characteristics Dependent upon Physical Anomaly. *a.* Modern science no longer adheres to the Kantian classification of temperament into four categories: "*sanguine*," "*phlegmatic*," "*choleric*" and "*melancholic*," but the emphasis is laid upon the importance of certain physical characteristics which determine the temperamental nature of man. In fact, we know that bodily anomalies like deaf-muteness, gibbosity, blindness, rheumatic conditions and diabetes, whether acquired or cogenital, are factors of singular significance with respect to the final formation of temperaments.

The more recent studies of our neural organization furnish irrefutable proofs to the effect that specific changes in the chemical constitution of the human body may cause marked modifications in its emotional system. This is especially true of the diseases in the thyroid gland (neck-gland made up of cellular tissues and filled with the alpha-iodine compound, and usually associated with colloid substance). On this subject Professor Macleod states:

"When the gland is atrophied at birth, the condition of *cretinism* soon becomes developed. . . . The characteristic features or cretinism are: (1) An arrest of growth, especially of the skeleton, accompanied by incomplete ossification of the long bones and a delay, often of several years, in the closure of the fontanelles. The disturbance in growth of the long bones occurs along the epiphyseal line, but the deposition of new bone beneath the periosteum proceeds, more or less, normally. The consequence is that the bones increase in thickness but fail to develop properly in length. (2) Poor development of the muscular system. (3) An unhealthy, swollen condition of the skin, so that it is yellowish in color, the face being pale and puffy. (4) An abnormal development of the connective tissues causing a shapeless condition of the surface; the abdomen is always swollen, the hands and feet are shapeless, and the root of the nose depressed. (5) *The nervous system also fails to develop properly, so that at the age of puberty or over, the child remains like an infant in his mental behavior, idiocy being common.*" [39]

This disease, then, causes fundamental changes in the physi-

[39] See J. J. R. Macleod, "Physiology and Biochemistry in Modern Medicine," Fifth Ed., pp. 992–993, St. Louis, 1926. Italics ours.

cal, and even skeletal constitution of the patient and, when inherited, produces a distinct degenerative type. It affects also, in a most harmful manner, the neural system, in which varied defects are diagnosed: sensibility is usually diminished and the cerebro-spinal nerves deficient; while mental dullness, derangement of the emotional mechanism and lack or loss of initiative have been clinically recorded in a vast number of cases. Furthermore, the Binet-Simon tests point out to the fact that diseases of the endocrine organs often reduce the mentality of adult cretinous individuals to about seven years.

It is hardly necessary to add that a physical anomaly of this nature becomes a dominant factor in the generation of persistently morbid frames of mind.

The interrelation of organ inferiority and delinquency is not a new discovery: in medical literature the subject has been discussed at some length by many eminent writers. Among these the names of Dr. Alfred Adler, L. F. Barker and G. S. Hall, may be recalled. But in criminology, to our knowledge, the causative connection between the two groups of phenomena is still neglected, mainly on account of the unfortunate tendency exhibited by many criminalists to confine their studies to the examination of the outward symptoms of criminality, without inquiring into its bio-physical and psycho-pathological nature. These fields are usually considered as constituting a sort of exclusive domain for "specialists" only, from which criminology is banned for ever by the "*nolle tangere*" sign.

As a matter of fact, however, the influence of bodily defects upon temperament is a momentous factor in the structuralization of the criminal disposition. The psychological approach to the problem will be clearly comprehended if the following statement of Dr. Wm. A. White is taken into account:

"The purpose and meaning of the organism as a whole, *its* tendency, nowhere receives expression in the human individual, until the final integration in the psyche. It is my contention that if at any point along this path an inferior organ is unable to do its share of the work then the concessions which have to be made to this defect and the compromises that have to be effected as a result of it must ultimately find their expression at the psychological level. In other

words, when an individual suffers from an organic defect, that he is thereby hampered in his conduct along those lines that require the full and complete functioning of that particular organ, and that therefore his whole mental attitude must be twisted to overcome and get around the defect in his organic structure, and in order to bring things to pass which he desires, he has to a certain extent to distort his conduct because of the barrier which this defective organ continuously offers." [40]

161. Physiologic Foundations of Temperament (continued), b. Characteristics Dependent upon Organ Inferiority. *b.* Tempermental characteristics are often derived from physical symptoms which, *in se*, are not pathological, but constitute the condition of organ inferiority. For instance, unattractive features, especially in women, have a distinctly depressive effect.

A typical instance may be cited in this connection: a German girl, of good family, who was deprived of those traits which go to make up physical attraction, was constantly teased by her brothers and sisters; they called her " homely-looking " and " ugly creature." These cruel remarks left a profound impression upon her mind and undoubtedly were responsible for a " melancholic " temperament. She grew shy and gradually withdrew altogether from social life. She graduated from a medical college and decided to devote her life to science. Her health was good and, despite the mental depression resulting from physical unattractiveness, her neural system was in a satisfactory condition. Year after year, she had been in seclusion, experimenting in laboratories and working at different biochemical stations. Eventually, she became a scientist of distinction. She married a physician and apparently was quite happy in her matrimonial life.

In this case, fortunately, the ultimate result of the temperamental disposition was not dramatic. The important point, however, is that certain physical characteristics, giving birth to a specific temperamental constitution, in turn, determine the whole nature of the human conduct.

Temperament, in this sense, has a great deal to do with the

[40] Dr. William A. White, " Mechanisms of Character Formation," p. 259, New York, 1924.

formation of habits in general and the criminal propensity in particular. Not seldom the mere presence of some physical anomaly suffices to originate morbid thoughts that work in an anti-social direction and lead to most disastrous consequences.

In a case of sexual murder, the history of the delinquent having been carefully examined, it was found that, as a youth, while studying in a military school, his class-mates made much fun of the underdevelopment of his otherwise normal sexual organs. These derisions became a source of great worry to the boy and made him gloomy and non-sociable. The idea developed in his mind that he was incapable of normal intercourse; on several occasions, this led him to seek the gratification of the natural instinct in homo-sexual practices. Whether under these influences, or because of some undetected facts in his past history, he soon began to exhibit strong sadistical inclinations. Perhaps, this perversion was caused by the antipathetic sexual attitude towards women in general, whom he, strangely, blamed for his alleged debility. When having attained the age of twenty-nine, he murdered a prostitute whose body was found with some thirty wounds and dreadful mutilations, the location and nature of which, in themselves, were sufficient to prove the sadistic character of the crime.

Here, again, we have an instance demonstrating the important fact that physical symptoms, not pathogenic, *in se,* may create a temperament which accelerates the growth of anti-social and criminal proclivities.

Thus, the physical element undeniably is a constituent part of temperament and that peculiar frame of mind which is its habitual complement.

D. *Character*

162. Character, its Definition and Place in Human Conduct. In the aetiology of human conduct there is an additional agency which, being distinct from temperament, is of primary interest to sociology and its criminologic ramification. This is character.

What is character? — The definition of this phenomenon is by no means easy. Without going into the examination of the

different controversial opinions on the subject, it may be said that *character is the sum total of our moral and rational convictions*. While this is but a tentative denotation, it expresses, we believe, the principal propriety of character, as distinguished from temperament, in that it emphasizes the psychic and decidedly rationalistic nature of the former.

This conception of character suggests to the criminalist several considerations having a direct bearing upon the mechanism of social conduct and misconduct.

I. Chronologically, character appears *after* the temperament has been formed. The emotional and physiological substrata of human moods account for the advent of temperamental traits at comparatively early periods of life; whereas, character, deriving its origin from reasoning, cannot achieve completeness before mental faculties are fully developed.

II. The process of character-formation passes through several important stages; its growth is gradual and, as a rule, it is stabilized, assuming a definite aspect, long after the puberty period. The history of the crystallization of character is not only affiliated with but directly dependent upon the functions of mental integration.

III. Because integration presupposes a long range of differential and synthetic operations, which are continuously extended, amplified and modified by induction and the intervention of new concepts (not mere verbal transformations), we find that even a crystallized character may be subjected to substantial changes, due to the influx of hitherto inconceived material into the ideational content. Character, then, is a psychic phenomenon whose ingredients are variable.

IV. Character, being the sum total of our mental and moral convictions, its constituent parts can hardly be homogeneous, for convictions themselves, even though they usually are but average resultants of accumulated experiences, comprise many *contradictory* ideas which account for the fact that oscillations are typical of rational behavior, whereas the absence of hesitative symptoms is, indeed, quite unusual.

V. Character may be related with the physical constitution

of man, through its various temperamental elements, and instinctive leanings; but its growth, focal position and specific influence upon human conduct stand in direct relation to the nature, number, persistence, organization and soundness of our conceptions.

VI. For this reason, character may come in conflict with temperament and innate longings; when this occurs, the final outcome of the inner struggle is conditioned upon the relative force of the two colliding factors.

163. Sociologic Nature of Character. These rules bearing upon the aetiology of character, predetermine its pronounced sociologic nature, since it is from social environment, *milieu social*, that we borrow guiding principles and conventional ideas to which we either adhere or against which we strive. The psychic material thus conveyed to us from the outside, refracting through the prism of individual consciousness, usually acquires an altogether new subject-matter, its intrinsic contents being supplemented and re-integrated by innate dispositions, temperamental symptoms and previously learned facts.

Nevertheless, the initial data building our experience are furnished from without; therefore, they can be only modified and not ignored by the integrative mind. Consequently, the complex mechanism which elaborates the elements of character, cannot be reduced to the simplified stimulus-response scheme advertised by the behavioristic school. No such plain patterns exist, no such mechanistic operations take place in our consciousness.

Owing to these considerations, we fail to comprehend certain sweeping assertions which have been recently made by " the revolutionary new science of behaviorism," and we cannot attach credulity to sensational revelations, like the one quoted below:

" One natural question often raised is: How do we ever get new verbal creations such as a poem or a brilliant essay? *The answer is that we get them by manipulating words, shifting them about until a new pattern is hit upon.* Since we are never twice in the same general situation when we begin to think, the word patterns will always be different. The elements are all old, that is the words that present

themselves are just our standard vocabularly — it is only the arrangement that is different." [41]

Character, in the sense set forth here, necessarily becomes a potent factor in the formation of habits and the determination of the governing modes of individual conduct. If convictions — rational and moral — have been derived from and made up of loose ideas, vicious principles, wicked doctrines, and criminal experiences, then, it is legitimate to expect that the

[41] Dr. John B. Watson, *Op. Cit.*, p. 198. This, indeed, is a simplified theory. In the first place, the behavioristic answer fails to explain, why should we try to manipulate words "shifting them about until a new pattern is hit upon"? What is the stimulus or the source of such a behavior? Why should have Goethe spent forty years of his life on "manipulating words" until he had "hit upon" the pattern of "Faust"? — Secondly, how are we going to explain, on the basis of the behavioristic doctrine, the mechanism of the creation of "Laocoön," "The Night Watch," the Milano Cathedral, or the non-Euclidian geometry of Lobachevsky? Will Dr. Watson insist that in all these psychic phenomena, or in Tchaikovsky's Sixth Symphony, — creation is nothing but the "manipulation of words"? Will he earnestly contend that the act of bringing into existence a poem is as simple as described in the following lines:

". . . Nor can the poet boast of any other method. Perhaps the latter has just read Keats, perhaps he is just back from a moonlight walk in the garden, perchance his beautiful fiancee has hinted just a little strongly that he has never sung her charms in sufficiently impassioned phrases. He goes to his room, the situation is set for him, the only way he can escape it is to do something and the only thing he can do is to manipulate words. The touch of the pencil starts the verbal activity just as the whistle of the referee at the football games releases a group of fighting, struggling men." (p. 199.) Mathematical reasoning, more than any other ramification of human thought, undermines the very foundation of the stereotyped attempts to reduce psychic phenomena to the stimulus-response proposition; for, when we deal with integers, or figures, or hypernumbers leading to algebra, or processes leading to transmutations, we find that in these spheres cerebral integration is conspicuously devoid of any outside influences which might be described as stimuli. James Byrnie Shaw, in his "Lectures on the Philosophy of Mathematics," has justly pointed out that "if we prove a theorem as to a triangle, or as to the number 2, the proof is nowhere dependent upon the material of an object, or upon its chemical constitution, or upon the day of the month, or upon the weather. This fact, which is obvious, is a sufficient reason for asserting that these theorems are therefore valid, irrespective of the material, or the time, or the weather." (P. 58, Chicago-London, 1918). In this case, our psychic function is governed by the intuitive factor, the conception of which is altogether unknown to modernistic behaviorism. Besides, from the standpoint of philology, the term itself, "standard vocabulary" means very little. The supply of words which goes to make up our vocabulary, is in a state of continuous transformation; *new* ideas give birth to new words; *old* words become obsolete. Shakespeare himself would probably find it difficult to comprehend some expressions and terms which are now in common usage among English speaking peoples, whereas even highly educated Englishmen, in our day, are reading their Shakespeare (not to mention Chaucer) with a glossary. What, then, is Dr. Watson's "standard vocabulary"?

actions of the individual will be influenced by anti-social motives. Sooner or later, the stream of egocentric impulses will resolve itself into a definitely organized delinquent disposition. This psychic state having once been reached, the perpetration of a specific crime becomes merely a matter of time and chance.

For criminology it is neither necessary nor possible to go into a more extended discussion of the nature of the principles entering into the process of habit-formation. It can be asserted that the crystallized habit is thus the compound result of the four factors (fundamental desires, instincts, temperament and character) which we sought to examine here. Before we leave this subject, it will be necessary to add a few words regarding the much-spoken-of *instinctive* nature of human habits.

Now, the sweeping contention that all habits necessarily are instinctive functions is incorrect, — a consideration which is of utmost importance to criminology. We shall draw the distinction between purely instinctive habits, and those rationally acquired. On the other hand, it is necessary to direct the attention of the reader to the signifiance of suppressed or perverted instincts in the structuralization of *criminal* habits.

Habits

164. Rationally Acquired Habits. Not all habits, which go to make up individual conduct, are derived from or directly dependent upon inherent predispositions. On the contrary, we are cognizant of many habits which are rather remotely, if at all, connected with instinctive responses, being artificially acquired modes of conduct and bearing no influence whatever upon the biological principles of human existence. Some of these customs form no part of the psychic process originating the phenomenon of crime. Such are, for instance, intentionally adopted manners or practices of reading before retiring, wearing certain things, visiting certain people, and so forth. There is no instinctive foundation in any of these acts and, furthermore, they stand in no relation to or in conflict with the social order. In the sociologic sense, they are indifferent or neutral facts.

But then there are numerous artificial habits which do be-

come essential elements in the formation of the criminal propensity.

As stated, there comes a period in our psychic development when we begin to evolve independent conceptions which, indeed, in some form or other, are necessarily tied to our previous mental experiences; but they are sovereign to the extent that the mechanically accumulated material is being shaped into ideas possessing the property of originality, much in the same way as when the sculptor moulds from formless clay the statue of an Apollo or a Venus.

The integrative faculty having been acquired, the mind is placed in a position where it can *choose* from the multitude of impressions gathered heretofore. Choice means differentiation and elimination. The selected ideas are re-grouped, re-considered, revised, and old thoughts integrated anew, so that finally an entirely novel ideational combination is created. If in the process of primitive cognition the volitional element is practically absent, — the analytical operations of the mind, on the contrary, are manifestly intentional. This frame of mind enables the human animal to plan his conduct, choosing between several equally possible courses of action. Here is an instance: X beholds a crippled old woman, standing in the street, begging for alms. How will X react? — He *may* pass by, turning a deaf ear to her appeals; he *may* give her some money; he *may* insult and scold her for begging in public; he *may* start talking to her for the purpose of finding out why she should be begging, and so forth. X makes up his mind to bestow charity. He is cognizant of the fact that he is at liberty to adopt anyone of the suggested methods of behavior, so that his decision comes as the result of a *volitional* process, leading him to deliberately perform a specific act, different from other reactions possible and plausible under given circumstances.

Were X to repeat this act on several consecutive occasions, it might grow into a habit to which he would probably faithfully adhere so long as he would be meeting the old woman in the street. But in such a habit there is nothing instinctive, in spite of the fact that its formation is subject to most of the laws which are applicable to the crystallization of instinctive

modes of conduct. The law of *recency,* for instance, is common to both categories of habits. To use Professor Dunlap's words, it might be said:

"In terms of the nervous system, the neural pattern of a reaction tends to persist after the reaction, ready to become a pathway for discharge for the same stimulus pattern, but disintegrating as time goes by, unless re-excited." [42]

Likewise, *frequency* and *vividness* are factors exercising a distinct influence upon the mechanism of habit formation, whether instinctive or deliberately acquired.

165. Rationally Acquired Criminal Habits. Criminal habits, too, may belong to either class. It is not unusual for a person whose previous record was clean, when confronted with some hardship, to commit willingly a dishonest deed which may temporarily solve the difficulty. Now, if the individual succeeds and his transgression remains unnoticed, he might, on some future occasion, be tempted under the stress of analogous circumstances, to repeat his experiment. If then, the deed should become converted into a habit, it would be scarcely right to call it *instinctive.*

In this connection, the following case might be mentioned: A cashier in the Freight Depot of the Nicholas railroad, in St. Petersburg, for many years had been honestly performing his duties. At the age of thirty-eight he met a man who took him over to the races. The cashier soon became addicted to gambling and in a very short time lost all his savings. One day, under the stress of financial embarrassment, he decided to "raise his income" by appropriating a portion of the freight charges on every shipment accepted by the railroad for transportation. After mature deliberation, he evolved this scheme: the consignor, having paid the stipulated sum, the cashier issued and gave him a receipt for the full amount paid. On the stubs, however, both the weight of the cargo and the amount received were proportionately reduced, so that neither the consignor nor the consignee was able to detect the fraud. On

[42] *Op. Cit.,* p. 224. On the general principles of habit formation see paragraphs 223–230 in the same work.

the other hand, the railroad management, basing their accounting upon the figures appearing on the stubs had no way of checking the discrepancy between the amounts actually paid and those entered in the books. When, at last, the fraud had been disclosed, it was found that altogether the cashier succeeded in making about 2500 false entries, having misappropriated a total sum of over 15,000 roubles. The man confessed to the crime and explained that he had experienced many hesitations before performing the first forgery. He knew, of course, the scheme to have been fundamentally dishonest; but later, according to his statement, the fraudulent method adopted by him became a mere routine procedure; he kept a double account, almost automatically making false entries. Finally, he grew unconscious of the systematic crime, in the perpetration of which he had engaged for several years.

In this case again, the instinctive element played no part whatsoever in the crystallization of the criminal propensity. It may well be that habits, intentionally acquired, are associated with some innate disposition and, consequently, may retain a remote relation with instinctive substrata.

166. Habits Originated by Suppressed Instincts. Psychologists belonging to the Freudian school have taken the view that many instincts exercise a steady influence upon the formation of habits and mental attitudes not only during adolescence but also throughout the period of mature life. Freud himself constructs his dream theory and partly the analysis of mass psychology on this assumption. Thus referring to what he terms "the collective soul," he said:

"If one should desire to form an exact idea of the morality of the crowds, it would be necessary to consider the fact that in the individuals reunited in a crowd all the individual inhibitions disappear, whereas, cruel, brutal and destructive instincts — these survivals of primitive epochs which are latent in the depth of every one — are being awakened and seek to be satisfied." [43]

In his lectures, Freud expressed this opinion still more explicitly, when he asserted:

[43] Dr. Sigmund Freud, "*Psychologie Collective et Analyse du Moi*," translation from the German, pp. 19–20, Paris, 1924.

" Constitutional predispositions are undoubtedly the after-effects of the experiences of an earlier ancestry; they also have been at one time acquired; without such acquired characters there would be no heredity." [44]

Other noted writers, as Dr. J. Glover and Professor McDougall, are also inclined to believe that the fabric of the adult mind is largely composed of innate, or otherwise instinctive, dispositions.

" Upon them " — asserts McDougall — " is built up, largely through experience, but also in virtue of innate tendencies to development (the nature and range of influence of which remain very obscure and disputable), the vastly complicated structure of the adult mind, consisting of a multitude of mental dispositions which determine more precisely the modes of our striving, our mental functioning. These are distinct structures, yet are intimately interconnected; and it is especially to be noted that those immediately concerned with our cognitive activities are outgrowths from the primary instinctive dispositions, which continue to be the great sources of the energy that activates all these derived or secondarily formed dispositions." [45]

As a working hypothesis, this theory may be accepted here, although it does not quite conform with our own understanding of the nature of instincts which the author believes at least in part, die away at a mature age when having served the biological purpose for which they had been implanted in the psycho-physical constitution of man.

The inhibitory influence of social environment upon the growth of innate tendencies and the general character of human habits is, of course, undeniable; it is also true that a suppressed instinct is capable of intervening at some remote stage of human development, notwithstanding the fact that it had remained dormant for many years or even atrophied in several consecutive generations.

167. Perverted Habits and Suppressed Instincts. The suppression of natural instincts or cravings, at present, attracts wide attention on the part of the scientific world, both neurol-

[44] Quoted from Professor McDougall's " Outline of Abnormal Psychology," p. 158, New York, 1926.

[45] Professor McDougall, *Ibidem*, pp. 158–159.

ogists and sociologists discussing its biological effect upon the organism, and its relation to the different forms of abnormal social conduct. For example, the acquisition of perverted habits, mainly in the field of sexual behavior, can be directly traced to artificial inhibition, among men and women alike. Dr. Kempf, whose instructive work on psycho-pathology we already had the occasion to cite, describes several instances clearly demonstrating the morbid results of this bio-psychical condition.

It often occurs, especially among women, that an instinct is suppressed, not by a restraining factor imposed from the outside, but by an intricate psychic state originated from within. Such feelings, as fear of pregnancy and the specific pains accompanying it, as well as the dread of losing physical attraction, may account for the neuro-pathological state known as "frigidity." Unfortunately, the aversion to normal sexual intercourse affects both the female and the male members of the family union and sometimes leads to its dissolution.

Obstinate repression of the normal development of the sexual instinct, as a rule, is responsible for the contraction of clandestine corrupt habits, which, in turn, generate the social evil of hypocrisy and foster in the individual criminogenic dispositions.

In extreme cases the desire, *quand même,* to suppress the sexual instinct gives birth to most abhorrent crimes, such as castration. It is interesting to note that in some remote sections of Northern Russia (Ural Mountains), there are still in existence two religious sects — the "castrators" (*skopzi*) and the "self-burners" (*samossojenzi*) — whose followers, believing sexual intercourse to be sinful, perform over each other the mutilations above referred to. The "self-burners" usually couple this dreadful ceremony with ecstatic movements and orgiastic dances.[46]

[46] Dr. Kempf cites case HD–15 of "a Russian soldier, aged twenty-four, single, uneducated and apparently a mental defective. At venereal inspection this patient was found to have inserted a safety-pin through the corpus spongiosum of his penis for the purpose of 'curing wet dreams' as he expressed himself. He also said several times that he would amputate his penis to cure himself." (*Op. Cit.,* p. 325.) It is not impossible that in this case the patient may have belonged to one of the two sects described in the text.

Such criminal habits, especially when they reach the state of religious mania, are contagious and, therefore, all the more dangerous from the standpoint of the social order.

These brief remarks probably suffice to emphasize the fact that the suppression from without or the auto-suppression of normal instincts, first, leads to perversions of different kinds; second, that these corrupt habits are easily converted into criminogenic propensities, and, third, that such habits, in their extreme manifestations, assume the form of insane practices and obnoxious crimes.

168. Criminal Habits — Instinctive and Rationally Acquired — Distinguished. The process of mental growth seems to exhibit a general tendency of gradually subordinating the purely instinctive material of cognitive processes to analytical reasoning which has no apparent affinity with fundamental innate dispositions. In this sense, habits, whether social or anti-social, acquired at a mature age, and volitionally created, in our judgment, should not be classed among the instinctive acts of human behavior.

But whether or not the formation of our conceptions and synthetic reasoning require the presence, in some degree, of the instinctive element, criminology ought to be guarded against confusing the two categories of habits — the purely instinctive — and rationally planned — because when a crime is the result of a deliberately evolved anti-social habit, the jurist stands face to face with a crystallized criminal intent which is often requisite to the consummation of the particular crime itself.

On the other hand, there are habits which have the element of compulsion as their underlying cause, and, consequently, are devoid of the symptom of volition. Different acts of this nature frequently come with neurosis. Dr. Smith Ely Jelliffe, and Dr. William A. White give the following description of this mental condition:

"The characteristics of the compulsion neurosis are certain compulsive tendencies to act or to think in certain ways. The patient is forced, *apparently against his will and without reason,* to think certain ideas or certain thoughts or to do certain things. The com-

pulsion increases until it is yielded to, then a period of calm follows which may be of variable length, until, so to speak, the energy has again accumulated, when the compulsion again manifests itself and must again be relieved by yielding. The patient has perfect insight into the matter, knows the whole business is foolish, but he cannot help it." [47]

169. Obsessional Habits and Delinquency. Typical signs of compulsion neurosis are represented in obsessional functions, like kleptomania and pyromania. These uncontrollable acts are apt to become *habitual*. Still, from the standpoint of legal imputation as well as in the light of the sociologic notion of delinquency, they cannot be considered crimes owing to the absence of volition in the process of their perpetration. In a way, they may be compared with acts committed under the influence of *vis major* (*force majeure*); only in *vis major* the constraint is originated from without (elemental forces of nature, political upheavals, exercise of somebody else's malicious will, etc.); whereas, in obsessional behavior the factor of compulsion works from within. This interpretation has been accepted by Charles Mercier, N. Tagantzev and Sir Fitz-James Stephen, and many other eminent psychiatrists and criminologists.

A more complex aspect of the same type of involuntary habits is found in a mental disease of a rather obscure nature, known as *latent epilepsy*, the objective symptoms of which, despite the works of Dr. Christoffel,[48] are still largely undetermined. An interesting case of this kind has been reported, in October 1926, by Dr. Eugen Gelma, before the French Society of Legal Medicine. In brief, the story was this: a boy of fifteen, of sound morality, a carpenter apprentice, with no pathological heredity, was arrested on a charge of immoral conduct in a moving picture theatre, at the moment when he started to urinate in the presence of a large number of spectators. The culprit seemed to understand nothing. Shortly after this oc-

[47] Smith Ely Jelliffe, M.D., and William A. White, M.D., "Diseases of the Nervous System," a textbook of Neurology and Psychiatry, p. 884, Fourth Ed., Philadelphia, 1923. Italics ours.

[48] *Gedankengänge in epileptischen Ausnahmezuständen. "Zeitschrift für die gesamte Neurologie und Psychologie,"* 1920.

currence, memory came back to him; but he was unable to explain either the sequence or the meaning of his actions, the very recollection of which he had completely lost. Subsequent medical examination proved that the act was committed by the individual in a state of latent epilepsy.[49]

Russian neurologists, more particularly the late Professor I. Sikorsky, called the attention to the fact that acts committed in this state — which in French literature are sometimes called "*états crépusculaires*" — also evince the proclivity of becoming *habitual,* thus assuming the form of epileptic automatism. Naturally, if the presence of this condition of transitional unconsciousness is objectively established (and this, we repeat, is a difficult task), — the deed, no matter how often it should be repeated, cannot be recognized as a crime in either the strict legal construction or the broad sociologic conception.

170. Summary. The attempt was made in this chapter to suggest to the student of criminology several lines of reasoning pertaining to the psycho-physical elements in human conduct and misconduct. The observations alluded to in the course of our discussion may also serve as an appropriate introduction to the examination of the interrelation of mental diseases and criminal phenomena (Chapters VIII and IX).

Summing up the foregoing remarks, it may be said:

1. It is a fallacy to entertain the idea of the existence of a "criminal type," as distinguished from and opposed to the so called normal type of man.

2. Equally erroneous is the contention that criminals are born, and that the delinquent proclivity is transmitted from one generation to another.

3. Morbid heredity exercises a strong influence upon the formation of pathogenic temperamental characteristics, and usually produces physical degeneracy, which, however, does not necessarily lead to the formation of specific criminal habits.

4. The symptom of professional criminality, while some-

[49] See "*Annales de Médecine Légale, de Criminologie et de Police Scientifique,*" issue No. 9, November 1926, pp. 456–459.

times appearing in several successive generations, is also not a congenital phenomenon. It is often contracted by imitation of anti-social habits, which, in turn, are subject to the general rules of habit-formation.

5. The mechanism of habit-formation is dependent upon two classes of psychic elements: *a. instinctive,* and *b. rational.* The fundamental desires with which the human animal is born are gratified by or through the mechanism of instinctive tendencies or responses.

6. Innate dispositions or instincts seem to be divided into two classes: *a. sub-instincts,* belonging to the domain of unconscious phenomena and, therefore, lacking the propriety of cognition, and *b. fully developed instincts,* containing both conation and cognition.

7. The development of innate tendencies, if pursuing a normal course, serves two generic purposes: *a.* the *self-preservative,* and *b.* the *reproductive.* However, if the normal growth of instincts is arrested or prematurely fostered, both biological objects are likely to be perverted, the habits thus derived invariably generating the criminal propensity.

8. The habit-formation is facilitated by the presence of an innate tendency, known as the *imitative instinct,* which, again, may serve constructive biological and sociological aims, or lead to different perversions and criminal practices.

9. Morbid habits and anti-social conduct may come, either as the result of the perversion of natural instincts, or their suppression. Artificial inhibition of natural instincts, both from within and without, frequently originates distinctly pathogenic conditions and criminogenic impulses.

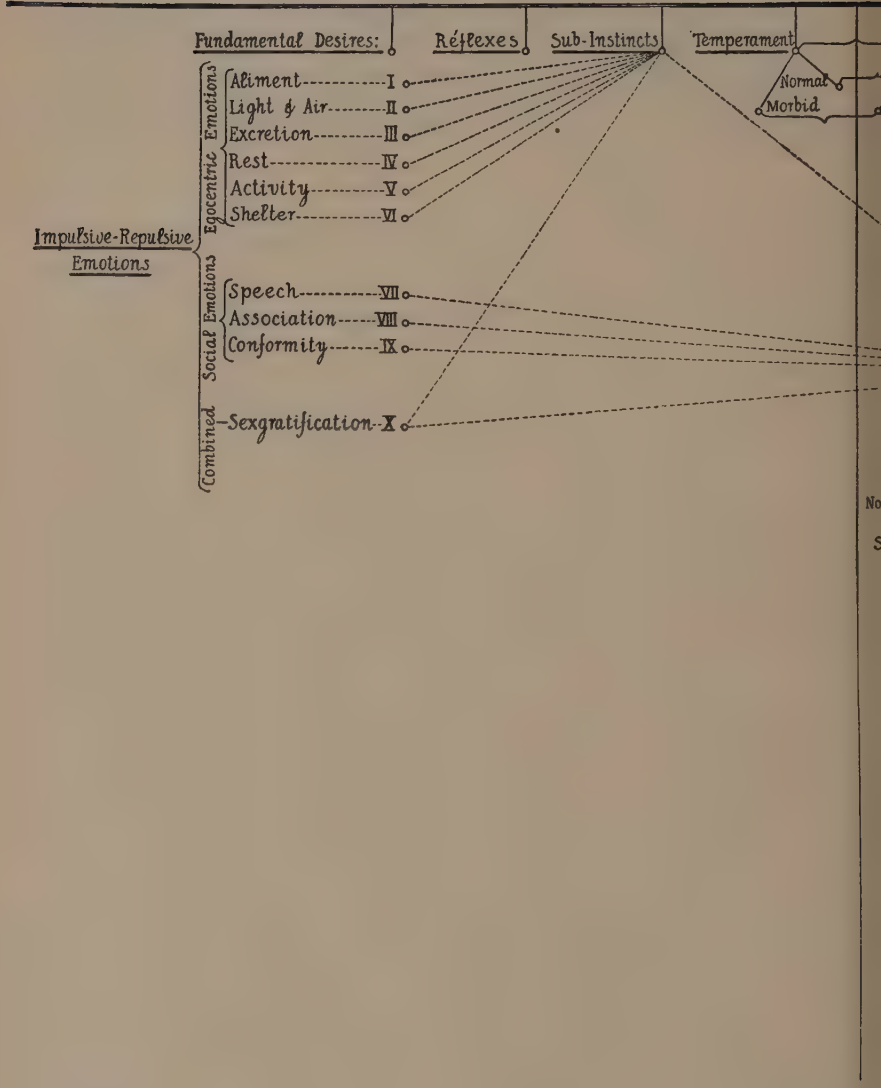
10. *Rationally planned habits* either conform to the standards of the social order, or, serve different anti-social purposes tending to produce the actuality of crime.

11. The habit-formation is also governed by *a.* the phenomenon of *temperament,* the nature of which is largely physical and emotional, and *b. character,* or the sum total of our rational and moral convictions, derived from the complex functions of cerebral integration, the material for which is furnished by social environment.

The annexed chart "Human Conduct" may help to obtain a graphic idea of the interrelation of these various psycho-social factors.[50]

[50] In examining the chart, it will be noticed that the hereditary symptom has been omitted from the field of "Unconscious States." The author believes that despite the fact that sometimes morbid heredity is clearly responsible for various criminogenic dispositions, the time has not yet arrived for introducing this factor, as a specific agency, in the aetiology of human behavior. Before this can be done, more material should be gathered with regard to the influence of this purely biological element upon the psycho-physical processes leading to and resulting in the commission of crime.

Unconscious States - Physiology



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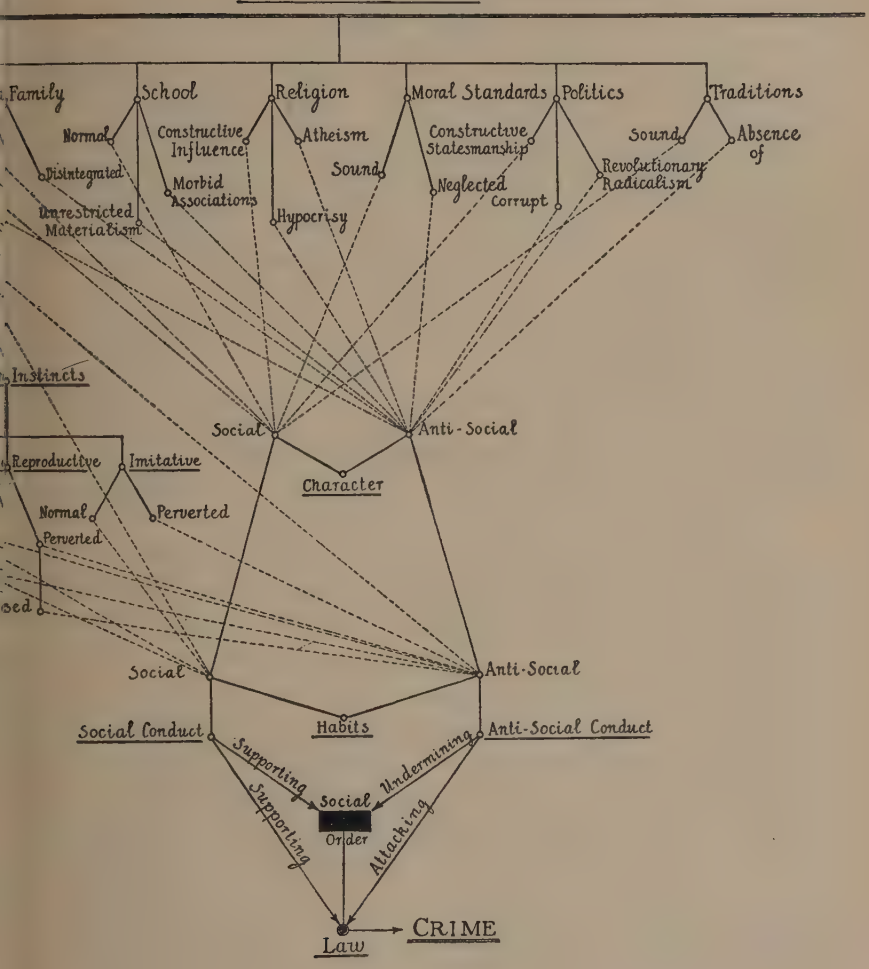

Conscious States - Environment
Family
School
Religion
Moral Standards
Politics
Traditions
Normal
Constructive Influence
Atheism
Constructive Statesmanship
Sound
Absence of
Disintegrated
Morbid Associations
Sound
Neglected
Revolutionary Radicalism
Unrestricted Materialism
Hypocrisy
Corrupt
Instincts
Social
Anti-Social
Reproductive
Imitative
Character
Normal
Perverted
Perverted
Social
Anti-Social
Social Conduct
Habits
Anti-Social Conduct
Supporting
Undermining
Social
Order
Supporting
Attacking
Law
CRIME

CHAPTER VIII. — CRIME AND RESPONSIBILITY — (Legal Aspect).

171. Social Order and Law-abiding Conduct. 172. Normal Psychic Status in the Criminal Act. 173. Crime and Insanity — Not Identical. 174. Is Insanity but a "Degree" of Sanity? 175. Criminology and its Interest in the Phenomenon of Insanity. 176. Presumptions of Responsibility in Different States of Insanity. 177. Question of Partial Insanity in American Courts. 178. McNaughten Rules. 179. Examination of the McNaughten Rules. 180. The "Right and Wrong" Doctrine. 181. Psychiatric and Legal Viewpoints on Responsibility. 182. French Construction. Its Indeterminate Character. 183. Swiss, German and Jugoslav Constructions. 184. Russian Construction. Section 39 of the Imperial Criminal Code. 185. Analysis of the Russian Construction. *a*. Inability to conceive the nature of the act. 186. *b*. Disintegration of Volition. 187. *c*. Unconsciousness. 188. *d*. Quantitative Defect of the Mind. 189. Russian Court Practice. The Alienist. 190. Jury and Alienists in Russian Practice. 191. Jurors and Insanity under the Anglo-American System. 192. Dean Wigmore's and Dr. White's views on the part of Psychiatrists in American Courts. 193. Nature of Psychiatric Analysis. 194. Witness Testimony in Insanity Cases. 195. Suggestions of Changes in the Procedure Involving the Insanity Plea. 196. Summary Remarks.

171. Social Order and Law-abiding Conduct. The adaptation of individual behavior to the precepts of the social order, as we know, is actuated by many sociologic and bio-psychic factors. In normal conditions there develops a state of harmony between the conduct of the human animal and the political entity to which he belongs and of which he is part. The modes of living evolved by the community, as a result of its rhythmical motion, are generally adhered to, while individual habits either conform to, or at least do not stand in conflict with, the laws and regulations decreed by the state.

The fundamental desires with which we are born, at first, seek their gratification and are brought to realization through the mechanism of instinctive impulses whose work is more or less automatic. With the increase of experience, however, when cerebral integration converts the primitive sensory-receptive impressions gained by the intellect, into a system of synthetic ideas and crystallized conceptions, the role of the self-regulated and unlearned acts gradually diminishes, while,

simultaneously, the field of rationally planned modes extends in scope, acquiring a controlling position in the intricate network of human conduct. At this stage, innate tendencies (sub-instincts and fundamental longings) become structuralized into complete instincts and conceived desires. The volitional symptom then prominently enters into the process of habit-formation which thus becomes the compound function of four fundamental factors: *a.* innate cravings, *b.* instincts, *c.* temperament, and *d.* character.

These four psycho-physical agents, in their evolutive growth, undergo both quantitative and qualitative changes, in consequence of which the attitudes of our mind toward the meaning and value of the social order are sometimes subjected to cardinal variations. So long as the social propensity keeps in check the stream of egocentric emotions, the modes of conduct, despite any mutations, continue to retain their legitimate aspect and do not substantially affect the relation between the individual and the state.

172. Normal Psychic Status in the Criminal Act. However, the equilibrium is interrupted:

1. When, for some reason, the egoistic impulses increase in number and finally pierce the defense-line of moral convictions and social principles;

2. When a single anti-social emotion grows so strong — for instance, under the sway of passion, constituting the cause of many casual crimes — that all restraining considerations are temporarily forgotten, disregarded or deliberately set aside in order to enable the selfish intent to develop into an anti-social act; and

3. When the ethical foundations are either weakened or dissolved, so that the natural egocentric tendencies are left free to dominate our motives and propensions (moral weaklings, social degenerates, like Loeb, " shrinking " habitual criminals, etc.).

In addition, the conflict leading to a specific offense may not be the result of a collision between the individual anti-social impulse and the social code, opposing it from within or without,

— but the effect of two egocentric wills clashing at some point, the outward manifestation of the shock assuming the form of crime. Such is often the case in gang wars.

In these different psychological manifestations of criminality, the general mental condition of the individual may retain all the characteristics requisite to normal reasoning. Such being the case, the problem of responsibility does not entail any difficulties: the court merely ascertains two principal facts:

a. Whether the defendant charged with the commission of a specific offense in reality was the author of the incriminated deed, and

b. Whether the act itself comprises all the elements requisite to the consummation of the particular crime of which the defendant is accused.

The first question *a.* is a matter of fact which must be decided upon the strength of the evidence brought before the court and duly expounded in the course of the trial. The second proposition *b.* is a legal problem, *par excellence,* the court being faced with the necessity of determining whether or not every one of the symptoms of the *corpus delicti* was present in the act committed by the defendant. Thus, in a case of extortion a New York court is bound by the following definition:

" Extortion is the obtaining of property from another, or the obtaining of the property of a corporation from an officer, agent or employee thereof, with his consent, induced by a wrongful use of force, or fear, or under color of official right " (Section 850 of the Penal Law of the State of New York).

The judicial test, then, is to determine:

1. Whether property, belonging either to a private person or corporation, *had been obtained* by the defendant;

2. If so, was the property obtained *with the consent* of the person or corporation from whom it had been taken; and, further,

3. Was the consent of the person or corporation induced *by a wrongful use of force or fear, or under color of official right.*

Taking for granted that all these elements are present, there remains the last problem to solve, that of determining the measure of punishment to be inflicted upon the convicted defendant.

The whole procedure is simple, while the question of individual responsibility is confined to the establishment of a causative relation between the conduct of the defendant and the actuality of a specific crime.

173. Crime and Insanity — Not Identical. Virtually in every country the administration of criminal justice is based on the legal presumption that every offender is fully responsible for his act until the contrary is proved. In other words, the commission of a crime, *ipso facto,* does not raise the question of insanity of the one who committed it. Daily experience teaches us that the overwhelming mass of offenses are perpetrated by perfectly normal individuals, who fully comprehend the nature of their transgressions, and anticipate and aim at their consequences.

The supposition itself that criminals are, or necessarily must be, " insane " cannot be held true by science and should be emphatically rejected, for lunacy and delinquency are by no means identical conceptions: persons affected by mental disorders very often show no tendency whatsoever of committing crimes, whereas habitual offenders, in nine cases out of ten, evince no symptoms of psychic anomaly. In specific cases and in certain forms of recidivism, of course, a causative connection between the two classes of phenomena may be disclosed. Still, criminality as a social phenomenon is neither the antecedent nor the consequence of mental deficiency, so that a state of affairs can be easily conceived, when insanity would be nonexistent, — crime still flourishing and undermining the social order.

Criminology should be guarded against the philanthropic tendency of treating crime merely as a form of psychic disease, and seeking, with the aid of psycho-analysis, to explain various brutal manifestations of recidivism by " suppressed complexes " or " sexual introversion." Speaking generally, " sexual determinism " in psychology is just as unfortunate a vogue as

economic determinism in the field of social science, — both endeavoring to reduce the meaning of phenomena to single causes. Partly under the influence of Freud and Jung, partly, however, due to the extreme doctrines of the Anthropological School, alienists and attorneys for the defense frequently resort to both the sexual symptom and insanity in order to justify an ordinary criminal act perpetrated by a person of average mentality, with no indications of psychic disease. In practice, in much too many cases, this policy defeats the fundamental aims of criminal justice and leads to the impunity of the delinquent.

We are unable to agree with John C. Goodwin who, in a recent study on the subject of the psycho-pathological aspect of criminality, stated:

"A growing number of thinking people are beginning to doubt the sanity of *all* murderers, on *Behaviourist* grounds. Some morbid mental process, they reason, must be operating in the mind of a murderer, otherwise he would not murder. And they base their view, not without logic, on the fact — well known to psychopathologists — that large numbers of people go through life tormented by a vague impulse to kill; their ability to control that impulse alone keeping them out of the dock. Reflecting on this point begets the question: 'How many insane murderers have been hanged?'"[1]

In point of fact, whenever "a vague impulse to kill" is found present, we are confronted with a state of mental derangement (mania), and, therefore, the whole problem of the patient's behavior should be investigated in the light of the latest discoveries of neuro-pathology. But there is no truth in the theory that every homicide is necessarily an act of compulsion, or every theft — a manifestation of kleptomania.

174. Is Insanity but a "Degree" of Sanity? Nor can we adhere to the view, often expressed by some writers, that there is no constituent difference between sanity and insanity, both phenomena representing but "degrees" of our mental faculties. Of course, when dealing with a *mild* case of neurasthenia, we are likely to discover a number of symptoms which are common to both sane and insane mental functions; for example: the

[1] See John C. Goodwin's "Insanity and the Criminal," p. 254, New York, 1924. Italics ours.

phenomenon known as " dissociation of consciousness," which is typical of fatigue neuroses, is not altogether alien to the normal frame of mind. Still, in cases of hysterical fits, somnambulism and amnesia the condition of dissociation is so profound that it has no affinity with the transitory oscillations or splits observed in the normal fields of consciousness.[2]

On the other hand, it is known that mental disorders are often accompanied by important destructions of the cortical zones and different degenerative processes in the thalamus and the pyramidal fibres.[3] Clinical research shows that in tumors, for instance, radical organic changes take place in the cerebellum, producing the condition of its softening, while, after the removal of tumors, the brain is found disfigured by depressions, and the like.

Much in the same way in meningeal diseases, especially of syphilitic origin, in paresis and tabes, various constituent mutations are catalogued in the brain, for example: the flattening of the thalamus, the displacement of the septum lucidum, the destruction of cerebral tissues, the disappearance of the cell-layers, or accumulation of fluid (hydrocephalus) within the cranial cavities, exercising pressure upon the ventricles and the aqueduct cortex. Similar is the pathological effect of different ruptures (sinuses of the dura, veins, etc.), as well as in meningeal apoplexy and hemorrhages resulting therefrom. These diseases cause partial decompositions of the brain substance, and so forth. Briefly, in a vast number of mental defects, the state of psychic derangement is by no means a question of degree only, but is accompanied by, or is the con-

[2] A classical case of somnambulism and amnesia has been reported by Dr. Janet in connection with his patient " Irène." Very important instances of these mental diseases have been discussed by Dr. Carl Duprel in his " Philosophy of Mysticism or the Duplicity of Human Nature " (translation from the German into Russian, Kiev, 1911) and Axenov in his brilliant essay on " Meta-Geometrical Philosophy " (Moscow, 1912, in Russian). Professor Joseph Jastrow, in his book, " The Subconscious " (p. 267, New York, 1906), referring to several instances of proved somnambulism, remarks that " as a modification or accident of sleep, it presents an altered disposition of brain-functioning, whereby a part of the mental machinery is set into action without arousing the rest." Among the phenomena grouped under the general caption of " dissociated consciousness," Jastrow justly cites different hypnotic states (pp. 273–277).

[3] On this subject consult Bechterew, *Op. Cit.*, pp. 428–429.

sequence of, important physiological and bio-chemical changes in the different regions of the neural system.

Insanity, then, is not an abstract or relative conception — a sort of fiction of the speculative mind — but a concrete, although immensely complicated, phenomenon, which may be, and in fact frequently is, affiliated with anti-social conduct.

175. Criminology and its Interest in the Phenomenon of Insanity. Criminology, whose province it is to investigate the causes of the formation of the criminal disposition, naturally, endeavors to find adequate answers to the following momentous problem arising from the condition of psychic debility:

1. The extent to which mental anomalies actually prompt a person affected thereby to act in an anti-social manner, and
2. The general principles governing the question of criminal responsibility in its relation to insanity.

The former proposition clearly belongs to neurology and psycho-pathology, whereas, the very conception of imputation or legal guilt is part of jurisprudence.

Methodologically, it seems more appropriate, however, first to discuss the different formal aspects of responsibility, in cases where insanity is pleaded. The determination of the attitude of the prevailing legal systems towards this vexing problem will enable us to reduce the scope of our inquiry into the psycho-pathological symptoms of criminality, by concentrating our attention principally on those manifestations of mental debility which actually justify the state to leave certain offenses unpunished.

176. Presumptions of Responsibility in Different States of Insanity. The interrelation of insanity and criminal responsibility can be examined in the light of the following presumptions:

a. According to the psychiatrist's diagnosis, a person may be a lunatic, and yet, may be considered legally responsible for the perpetrated crime;

b. A person may not be insane in the psycho-pathological meaning of the term, and yet, owing to the theory of legal imputation, his act may be regarded as unpunishable;

c. A person may be sane on the whole, and still, in some one respect, exhibit marked deviations from psychic normalcy, — a fact which, from the standpoint of criminal law, may either excuse the transgression or serve as a mitigating circumstance;

d. The offender may be insane in most phases of his mental life, nevertheless, being fully responsible for an act committed either in that province which is not affected by the psychic derangement, or is committed between two stages of unconsciousness, — at the time of the so called *lucidum intervallum;*

e. Finally, the *lucidum intervallum* may be held as a mental state which is either absolutely normal (full responsibility) or partly so (partial insanity) or on the contrary coincide with a sudden condensation of all psychic faculties enabling the individual to achieve unusual results in the field of reasoning.[4]

A rather important remark should be made, however, in connection with this classification which manifestly is but a tentative scheme: modern psycho-pathology justly insists upon treating the various manifestations of mental deficiency not as disconnected phenomena, but, as it were, *in toto,* or as a phase of the development in the general pathologic condition which generates a long series of psychic aberrations from, what is termed, — normalcy.[5] For this reason, the modalities suggested by us, while useful for the analysis of the legal concepts of imputation, have but a limited significance from the viewpoint of the diagnosis of the particular psychosis in its dynamic and ever-changing aspect.

With this modifying statement in mind, we shall now proceed to examine the practical status of the problem, as it has been interpreted in the decisions of the different courts and

[4] This is the psychic state which Dostoievsky described in his "Idiot." Prince Mishkin, an epileptic, calls it "moments of supreme harmony" — immediately preceding the attack, — "only five seconds (more than five seconds the soul would be incapable of enduring), striking like lightning through the dark night of the unconscious, for which it is worth while to surrender the whole life."

[5] On this subject, Dr. Glueck says: "Since the real significance of the mental symptoms *to the patient* can only be interpreted in the light of the psychology of mental disorder, the jury is not in a position to evaluate the defendant's knowledge and reasoning capacity until after the experts have given an unbiased picture of the defendant's psychosis *in its totality.*" ("Mental Disorder and the Criminal Law," p. 185, Boston, 1925.)

penal codes, both in Anglo-Saxon countries and Continental Europe.

Anglo-American Construction of Responsibility

177. Question of Partial Insanity in American Courts. The distinction between the two conceptions of criminal responsibility — legal and psychiatric — is not unfamiliar to American court practice.

Thus, the Supreme Court of Washington, in the case of the State *vs.* Craig (1909) held:

"A person may be partially insane on all subjects, and yet, be criminally responsible if he had sufficient capacity to distinguish right from wrong with reference to the crime committed. On the other hand, he may be mentally sound upon almost all subjects, with power or rational thought and capacity to meet the ordinary affairs of life; and yet upon some one or a particular group of subjects manifest a mental excitement, either of desire or aversion that makes him wholly irresponsible within the limit of his aberration."

Here, the court recognized the theory of *partial insanity* adhering, however, to the fundamental Anglo-Saxon doctrine of crime, founded upon the ethical symptom of "*right and wrong.*" In this decision it was assumed that a person, affected by some fundamental psychic defect ("insane on all subjects"), may still be capable of distinguishing between "right and wrong"; if this faculty be retained by the defendant in a criminal case, he may be, on this ground, held responsible for the incriminated offense.

An analogous view has been taken by the court of Illinois in the case of People *vs.* Lowhome (1920) in which the attempt was made to differentiate between the various degrees of partial insanity of the paranoia type, sometimes also called — *monomania.* This decision is all the more significant as it deals with two separate elements bearing upon the problem of legal imputation:

a. The traditional conception of "right and wrong," and

b. The comparatively novel symptom referred to as "irresistible impulse."

The opinion has been expressed that although the defendant may have been capable of distinguishing between " right and wrong " he cannot be held legally responsible, provided the offense was committed under the influence of an irresistible impulse.

These and similar decisions of American courts pertaining to criminal responsibility,[6] notwithstanding the great confusion prevailing on this subject, undoubtedly are derived from one common source, that is the basic theory laid down in the famous McNaughten case in England. Although the case itself dealt with the specific delusion of persecution, nevertheless, in the practice of English courts, the rules formulated by the House of Lords are considered as having a general application in all cases where the question of insanity comes under consideration.

These guiding principles still constitute the Anglo-Saxon doctrine of criminal responsibility. The Trial of Lunatics Act of 1883, the Criminal Lunatics Act of 1884, and especially the Mental Deficiency Act of 1913, introduced important changes in the *legal procedure* with reference to cases involving the issue of insanity, but practically left intact the responsibility doctrine itself. To these Acts we shall return later.

Here it should be mentioned that the McNaughten rules have been severely criticized and elucidated by many authors of prominence, more particularly, Sir FitzJames Stephen, Sullivan, Glueck and Mercier; nevertheless, both English and American courts continue to base their decisions upon the patriarchal idea which the English judges have framed in their " rules " over eighty years ago.

It is also important to remember that the English Committee appointed by the former Lord Chancellor, Lord Birkenhead, " to consider what changes, if any, are desirable in the existing law, practice and procedure relating to criminal trials in which the plea of insanity is raised . . .", *in 1923,* found:

" 1. It should be recognized that a person charged criminally with an offense is irresponsible for his act when the act is com-

[6] See U. S. Supreme Court, Davis *vs.* U. S., 1895, Arkansas, Williams *vs.* State, 1888, New Hampshire, State *vs.* Pike, 1870, and so forth. Compare also Section 34 of the Penal Laws of the State of New York.

mitted under an impulse which the prisoner was by mental disease in substance deprived of any power to resist.

2. *Save as above, the rules in McNaughten's case should be maintained.*"

For these reasons it seems appropriate to embody these "rules" in the text of our present study:

Rules in the McNaughten Case

178. McNaughten Rules.

Questions:	*Answers:*
1. What is the law respecting alleged crimes committed by persons afflicted by insane delusions in respect of one or more particular subjects or persons: as, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to the law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury or of producing some supposed public benefit?	1. Assuming that your lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of the opinion that, notwithstanding the party accused did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting contrary to law, by which expression we understand your lordships to mean the law of the land.
2. What are the proper questions to be submitted to the jury when a person afflicted with insane delusion respecting one or more particular subjects or persons is charged with the commission of a crime (murder, for in-	2. and 3. As those two questions appear to us to be more conveniently answered together, we have to submit our opinion to be that the jurors ought to be told, in all cases, that every man is presumed to be sane, and to

Questions:

stance), and insanity is set up as defense?

3. In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act was committed?

Answers:

possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that to establish a defense on the ground of insanity, it must be clearly proved that at the time of the committing of the act the accused party was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury, on these occasions, has generally been whether the accused, at the time of doing the act, knew the difference between right and wrong; which mode, though rarely, if ever, leading to any mistake with the jury, is not, we conceive, so accurate when put generally and in the abstract, as when put with reference to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused solely and exclusively with reference to the law of the land, it might tend to confound the jury by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction; whereas the law is administered upon the

Questions:

Answers:

principle that every one must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the jury whether the accused had a sufficient degree of reason to know he was doing an act that was wrong; and this course, we think, is correct, accompanied with such observations and explanations as the circumstances of each particular case may require.

4. If a person under an insane delusion as to existing facts commits an offense in consequence thereof, is he thereby excused?

4. The answer must, of course, depend on the nature of the delusion; but, making the same assumption as we did before — namely, that he labours under such partial delusion only, and is not in other respects insane — we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defense, he would be exempt from punishment. If his delusion was that the deceased had inflicted a seri-

Questions:	*Answers:*
	ous injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment.
5. Can a medical man, conversant with the disease of insanity, who never saw the prisoner previously to his trial, but who was present during the whole trial and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious, at the time of doing the act, that he was acting contrary to law, or whether he was labouring under any and what delusions?	5. We think the medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide, and the questions are not mere questions upon a matter of science only, in which case such evidence is admissible. But where facts are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right.[7]

179. Examination of the McNaughten Rules. Here, we find the following principal elements of the Anglo-Saxon construction of criminal responsibility:

a. The legal presumption that a man is sane and possesses a sufficient degree of reason to be responsible for his crime, until the contrary be proved to the satisfaction of the jury;

b. The fundamental *ethical* conception of "wrong" as the constituent symptom of crime;

c. The requirement of knowledge on the part of the defendant, *at the time of the commission of the crime*, that he was acting contrary to law;

[7] Quoted from Dr. W. C. Sullivan's "Crime and Insanity," pp. 224–227, New York, 1925.

d. The admission of partial insanity, with specific reference to delusions;

e. The assumption that a person laboring under a partial delusion only, may be relieved of responsibility, if and when it is proved that the criminal act itself is the functional result of the specific psychic deviation of an otherwise sane mind.

The doctrine of criminal responsibility, as expounded in the McNaughten case, thus, comprises, on the one hand, certain legal precepts, while on the other hand, it operates with specific psycho-pathological notions which only remotely conform to present-day psychiatric conceptions. In order, however, that a clearer understanding of the actual status of the problem in the English judicial practice might be gained, attention should be drawn to the fact that even according to the procedure established under the provisions of the Trial of Lunatics Act (1883) a defendant, although he is found to have been insane " at the time when the act was done or the omission made," *is directed by the court to be detained as a criminal lunatic* " during His Majesty's pleasure," *and no appeal against such a verdict can be made.* The *" guilty but insane "* verdict of the English jury has but little, *if any,* advantage over the procedure stipulated in the *New Provisional Criminal Code of the Chinese Republic,* section 12 of which provides:

" An act of a mentally deficient person shall not be considered a crime, *but such person shall be confined in prison during a term commensurate to the degree of his psychic state.* Exception shall be made with regard to acts committed in a state of intoxication, as well as deeds perpetrated by those mentally diseased during their lucid periods." [8]

While, as Dr. Sullivan justly observes, the English Mental Deficiency Act of 1913, materially improved the procedure in a large number of insanity cases, by authorizing the court, if they be satisfied that the defendant is mentally defective, to

[8] *The New Provisional Criminal Code of the Chinese Republic,* Russian Translation, Kharbin, 1915. Another amusing article of this Statute (14) reads as follows: " An act which is respectable or not harmful to the social order, if undertaken for the purpose of improving social customs, shall not be considered a crime."

place him in an insane asylum, instead of sending him to prison or otherwise punishing him, — nevertheless, the legal significance of the Act is lessened, first, because persons charged with capital offenses do not come under its provisions, and, secondly, the court *may,* but is not bound by law to relieve offenders found insane from punishment.[9]

In addition, according to the English system, the question of psychic deficiency does not arise in the preliminary stages of the criminal investigation: neither the coroner nor the grand jury are, *ex officio,* concerned with the mental state of the defendant. In point of fact, although the offender should actually be insane, for the first time the issue can be raised when he is arraigned. If the jury find the defendant insane on arraignment, again, he is not discharged, but ordered to be detained "as a criminal lunatic during His Majesty's pleasure."

In other words, under the English procedure, during the initial stages of the investigation, the legal position of a mentally defective offender is in no manner protected by special provisions of the law, and thus, he is treated on a false theory of being sane, which, *in se,* frequently may constitute a gross miscarriage of justice.

180. The "Right and Wrong" Doctrine. We shall conclude this brief sketch of the Anglo-Saxon construction of criminal responsibility in insanity cases by alluding to the much debated topic of "right and wrong," which occupies such a prominent place in the general theory of crime, in both England and the United States.[10]

It will be recalled that our own definition of the term crime was formulated as follows:

Crime is a deed prohibited and punishable under the laws of a particular state, constituting a willful attempt on the part of the individual against the existing social order and that factor which con-

[9] Compare Dr. Sullivan's *Op. Cit.,* p. 256.

[10] On the interpretation of the term "wrong," see People *vs.* Schmidt (New York, 1915). In this important decision the Court held that the conception of "wrong" ought not to be limited to its legal sense, and thus the moral element was prominently set forth in the construction of the "right and wrong" doctrine.

trols the coördination of the different elements of which society is the synthesis.

The author has been laying particular stress upon the necessity of approaching the field of our study from the sociologic viewpoint, and the fact has been systematically emphasized that crime, *prima facie,* is a social phenomenon. We have gone farther, by asserting that " where there is a social order there must be crime, where there is crime there must be a social order in existence." Thus, criminality was conceived as a *sui generis* function of society itself.

Now, according to this notion, neither Garofalo's theory of " natural crime " (see Chapter I), nor the Anglo-American doctrine considering " wrong " virtually as a synonym of crime, can stand the test of scientific criticism.

The conceptions " right " and " wrong " clearly belong to ethics. They deal with two phases of one and the same phenomenon, that is, the metaphysical problem of moral truth — whether individual or social. In the majestic roll-call of centuries and ages the eternal question of Pilatus: *" What is truth? "* — is echoed and re-echoed without the remotest hope for its universal solution. Every society has a moral code of its own, embodying rules and precepts that are *not* permanent. Things which today are considered *wrong,* tomorrow will be found on the list of customs considered *right.* Acts and deeds which yesterday were regarded as right, — today are attacked and prosecuted by the state, while its judicial machinery is engaged in the destruction of their very reminiscence.

Even the gravest offenses, such as murder and theft, alternatively can be interpreted as being rightful and wrongful deeds, according to the circumstances under which they are perpetrated.

Shall we say, for instance, that the act of a person killing the brute assaulting a little girl is wrong? Shall we maintain that a child stealing a loaf of bread for its sick mother, dying of starvation, — is wrong? Shall we assert that the killing of a dog is right, even though it is not classed among the deeds prohibited and punishable under the provisions of the existing

penal codes? And, again, — we repeat the question asked on some earlier occasion: — Is there anything intrinsically wrong in selling a bottle of beer or explaining the fallacies of the Marxian dogma? — Nevertheless, both the man selling a bottle of beer and the professor imparting to his students a critical point of view on Marx and his " Capital," are both considered criminals, — the former in the United States, the latter in Soviet Russia. Finally, is it intrinsically wrong to teach the principles of Darwinism and the subject of evolution, whether they be scientifically erroneous or sound? — And, yet, here we have the Darrow trial and specific laws promulgated by one or several states of the Union, prohibiting and making it a punishable offense to discuss in school a scientific theory which is neither obstructive nor immoral.

Where, then, is the criterion of " right " and " wrong "? Where is the line of demarcation between the two? And how is it possible to adhere, at least in theory, to a doctrine of criminal responsibility, making legal imputation dependent upon arbitrary and indeterminate symptoms, which are not only changeable, but even *interchangeable,* because of the mutations taking place in social psychology itself and diverse conditions conveying substantially different moral aspects to human conduct.

Morality, both social and individual, is not an abstract concept detached from social reality, but — on the contrary — is a mode of expression of the social order itself, being derived from the sum total of other ingredients moulding the life of an organized community. Ethical principles, then, being in a state of continuous transformation, hardly can be used as precise criteria of legal systems and constructions.

While it is true that legislature is also subject to changes and is not exempt from the general laws of evolution, nevertheless, at every given moment, it constitutes a concise frame within which the functions of every-day life are strictly regulated and precisely defined. Outside or beyond these set limits, there extends a vast field of moral and immoral ideas, subjective attitudes, personal relationships, and so forth, which have not yet found their formal expression — whether negative or positive

— in the crystallized terms of legal language. And yet, they do, to a certain extent, influence public consciousness, and eventually may become important socionomic factors.

Whatever crime may be from the psychological and sociological standpoints, its only trusty legal criterion is that which is reflected in the respective penal statutes. Whether we consider an act right or wrong, so long as it is qualified as a prohibited and punishable deed, we are confronted with the phenomenon of crime.

Nor is there any necessity of resorting to metaphysics and transcendental conceptions in order to achieve the practical ends of the administration of criminal justice. No matter how long and scholarly one may be moralizing on the "right and wrong" subject, the actuality of the penal code is the only guide in the solution of the practical question, whether or not a given deed is a crime. The jurors, therefore, should not be asked, whether an act was right or wrong, whether the defendant knew, at the time of its perpetration, the difference between the two ethical notions; — but they should be charged with the question whether such an act, prohibited and punishable under sections so and so of the penal code, has been committed by the offender. In addition, of course, various other propositions may be raised, — more particularly those involving the mental state of the defendant. And, if it be found that his psychic faculties were impaired, then, the court is confronted with the problem of responsibility, regardless of the moral value or immoral nature of the deed itself.

Such a construction, naturally, does not eliminate the necessity of laying down definite rules of imputation in cases where the plea of insanity is raised.

Continental European Constructions of Responsibility

181. Psychiatric and Legal Viewpoints on Responsibility. The Anglo-Saxon theory of partial insanity in relation to the legal problem of penal imputation is also commonly adhered to in Continental Europe. There, too, the somewhat arbitrary presumption is made that the practical aims of criminal procedure justify the courts to treat an offense committed by a

mentally deficient person as an independent, *an und für sich,* existent fact, detached from the general psychic constitution of the offender.

But, as stated before, modern neurology correctly maintains that so called partial mental unsoundness, as exhibited in a specific criminal deed, is but one of the many external and inner manifestations of *generally* impaired psychic faculties. The conduct of a person may *seem* abnormal only in some one particular respect, or only during a certain period; nevertheless, this individual indication is nearly always sufficient to presume that there is some constitutent defect in the neural organization of the delinquent.

The controversy, in this respect, between psychiatry and jurisprudence results from the fact that the alienist, first of all, tries to form a *general* conception of the patient's conduct, which is considered in its unbroken continuity. For the medical expert, then, the incriminated act of the insane offender is incidental to a more complex phenomenon of the *history* of his disease. The jurist, on the contrary, is primarily concerned with the fact of the offense itself, and is often inclined to treat the sum total of the defendant's mental characteristics as a mere incident in the general picture of the criminal event.

In Continental European legislature and court practice, as in England and America, attempts were made to distinguish the different stages of the development of psychosis in order to determine when an act of a lunatic should be imputed and, when, on the other hand, he should be relieved of criminal responsibility.

French Construction

182. French Construction. Its Indeterminate Character. The French statutory construction of responsibility, when the issue of insanity is set forth, is rather indeterminate. Section 64 of the Penal Code merely provides that " there shall be no crime or misdemeanor if the accused was in a state of insanity at the time of the action. . . ." But in the practice of French Courts the conception of partial insanity is well known. Thus, as far back as 1886, the Orleans Court of Appeals held:

" . . . Epilepsy can be considered as precluding penal responsibility of a person for an offense not only as regards the acts perpetrated by him at the time of the attack of his disease, but also during the period of agitation which immediately precedes such an attack."

Still, this interpretation, while substantially correct, does not lay down a general rule of imputation, and obviously cannot serve as a guiding theory in matters of criminal responsibility. The unsatisfactory status of the whole problem has been recognized by the French Government itself and has been frequently alluded to in special literature. In fact, in 1905, the French Ministry of Justice sought to remedy the situation by issuing a circular in which the broad aims of the psychiatric diagnosis in criminal cases were outlined. In part the document reads:

" The more recent conventions of criminal science have justly dwelled upon the subject of possible mitigation of the guilt of the defendants and those arraigned, due to their mental state; they were led to declare that in most cases the courts and tribunals do not possess the necessary elements for determining the exact degree of the offender's responsibility.

Certain legal physicians (*médecins légistes*) believe to have satisfactorily coped with the duties entrusted to them when they have concluded, in a summary way, that the responsibility is either limited or attenuated.

A conclusion of this kind is much too vague in order to enable the judge to ascertain the real guilt of the defendant according to his mental state at the time of the action; this insufficiency, however, is, as a rule, due to the lack of precision of the mandate given to the expert. In addition, among alienated persons, in the proper sense, degenerates are encountered, individuals subject to momentary morbid impulses, or affected by sufficiently marked mental anomalies, justifying, with regard to them, certain moderation in inflicting punishments prescribed by the law.

It is important that the expert should be placed in a position to indicate, with the greatest possible precision, in what measure was the indicted person responsible for the incriminated act at the moment of its perpetration.

For achieving this result . . . the judicial commission should always, *ex officio,* propound the following two questions:

1. Was the individual person in a state of dementia at the time of the act, in the sense of Art. 64 of the Penal Code;

2. Does the psychiatric and biological examination reveal in him mental or physical anomalies of a nature reducing, in a certain degree, his responsibility ..... "

It will be readily seen that these instructions in no way solve, or even tend to attack, the fundamental difficulties arising from and connected with the medico-legal task of determining the precise mental condition during which the offender committed the incriminated deed. So long as both the French Courts and their medical experts are bound by Section 64 of the Penal Code, with its unsettled formula; "*était de démence,*" which, from the standpoint of psycho-pathology, may comprise most divergent psychic states and degrees of insanity, — the main question of responsibility cannot be properly answered.[11] By this, it is meant that the alienist in response to the query of the judicial commission might assert, for instance, that the defendant, at the time of the commission of the crime, was in a state of "*great excitement,*" or in a mood described as "*depression,*" or that he was affected by *dementia.*

Assuming these contentions of the psychiatrist to be correct in every respect, it might be anticipated that, on this ground, he would conclude that the accused was irresponsible. Still, such diagnoses are vague in the extreme, because, in the first place, " mental excitement " and " depression " are by no means exclusive attributes of insanity; secondly, the degree, and more particularly, the psychologic effect of these mental conditions upon the conduct of the defendant, continues to be an *unknown quantity* in the theorem which the jurors are expected to solve; third, the term "*dementia*" alluded to in the French Law, as well as the expressions " mental disorder," " insanity " and the like, encountered in other European codes, do not set forth any specific symptoms of irresponsibility.

Thus, referring to " excitement," Professor Bernard Hart explains:

" Every one is acquainted with the meaning of excitement, and the term does not require further definition. It is a symptom of frequent occurrence in insanity, where it differs from the similar phe-

[11] Section 489 of the French Civil Code, besides the term "*démence,*" alludes to: *a.* imbecility and *b.* furor.

nomenon met with in normal mental life mainly in the exaggeration of its manifestation, in the apparent lack of an adequate cause, and in the fact that it is out of harmony with the patient's real condition and circumstances." [12]

The psychic properties of excitement being so indeterminate, another alienist, summoned by the state, may take the view that, while the psychic condition testified to by his learned colleague was existent at the time of the perpetration of the crime, — nevertheless, the defendant was neither insane nor in such a frame of mind as would make him irresponsible for his act.

In such circumstances, what would the jurors do? — The average layman on the jurors' bench would be perplexed and at a loss to arrive at any definite decision regarding the principal subject of legal responsibility of the defendant. The jury, in their own minds, would be oscillating between Scylla and Charybdis of psychiatric ambiguity, and probably, in nine cases out of ten, would acquit the offender.

Swiss, German and Jugoslav Constructions

183. Swiss, German and Jugoslav Constructions. Turning from the French conception of criminal responsibility, to the considerations formulated on this subject by Swiss jurists, who, in 1916, prepared the draft of the new Federal Criminal Code, we find that they, too, left the problem unsettled. The Swiss Commission was largely governed by the same ill-defined principles as are prevalent in the Anglo-American system. Thus, Section 12 of the *"Vorentwurf zu einem Schweizerischen Strafgesetzbuch"* reads:

"Whoever, at the time of the commission of a deed, owing to mental disease, feeblemindedness or marked derangement of consciousness, is incapable of comprehending its wrongfulness, or of acting in accordance with such comprehension, shall not be punishable." [13]

[12] Dr. Bernard Hart, "The Psychology of Insanity," p. 25, Tenth Ed., Cambridge, 1925.

[13] Author's translation from the German. See *"Vorentwurf zu einem Schweizerischen Strafgesetzbuch," Fassung der Zweiten Expertenkommission,* Zurich, 1916.

Here, again, the symptom of "wrong" is prominently introduced into the construction of criminal guilt. It is the comprehension or non-comprehension of this conception that determines the queston of responsibility. Equally, on the strength of Section 14 of the same Statute (draft), the mitigation of one's guilt is made dependent upon the reduced de-degree in the realization of the "wrongfulness" of the incriminated act.

Nor does the German theory of responsibility present a satisfactory solution of the matter under consideration, although it sets forth a new symptom, namely, "*the free exercise of will,*" which, in a measure, with respect to certain mental defects, may serve as an appropriate gauge for guiding the expert. Section 51 of the Imperial German Criminal Code, referring to the grounds precluding or mitigating punishment, states:

"If the offender, at the time of the committal of an offense, was in a state of unconsciousness or derangement of the intellect due to illness by which the free exercise of his will was prevented, the act is not punishable."[14]

This construction is manifestly too narrow to embrace all the symptoms of insanity, and especially those which accompany feeblemindedness, the various phenomena of compulsion and many psychic states which are observed in neurasthenics.

The problem of responsibility seems to be more adequately and broadly dealt with in the draft of the new Jugoslav Penal Code. As will be shown later, its concepts of imputation with reference to insanity, are partly derived from the Russian theory as formulated in the Imperial Criminal Code of 1903. Section 19, Part 1, of the Jugoslav Draft provides that the responsibility shall be precluded when the offender could not be aware of the nature and meaning of his act, owing to psychic disease, or unconsciousness, or feeblemindedness. These symptoms are clearly defined and may serve as guiding principles in the determination of those mental states which should be considered as eliminating criminal guilt.

[14] English Translation of the Imperial German Criminal Code, Johannesburg, 1917.

Russian Construction

184. Russian Construction. Section 39 of the Imperial Criminal Code. It is not the province of law to suggest scientific definitions of the psychiatric conception of insanity; nor should jurisprudence be concerned with its physiological nature. But the legislator is fully justified in determining those legal marks which, in his judgment, must either relieve the defendant of responsibility or be regarded as mitigating circumstances, leaving it to the alienist to investigate, whether or not, at the time of the commission of the incriminated deed, the symptoms established by the law were actually present.

Among the different legislative endeavors to discover such psychic elements, the Russian system of imputation, as laid down in the revised Imperial Criminal Code, of 1903, attracted considerable attention and deserves to be treated at some length:

Section 39 of this Statute reads as follows:

"A criminal deed shall not be imputed if it has been perpetrated by a person who, at the time of its commission, was unable to understand the nature and significance of the perpetrated act, or control his actions in consequence of a pathological derangement of his psychic functions, or owing to an unconscious state, or due to mental underdevelopment resulting from a bodily defect or disease." [15]

Here, we find four definite *mental* states which, in the opinion of the legislator, if present, *must* be regarded as legal im-

[15] The author deliberately refrains from analyzing the provisions on imputation as set forth in the Criminal Code of the Russian Socialist Federative Soviet Republic (No. 15, Article 153 of the Collection of Laws, 1922, supplemented by Amendments issued up to December 31, 1924) because the legalistic conceptions of the Soviet law-makers constitute in various respects a marked regress in comparison with the system of legislation that existed under the old Imperial Régime. Section 17 of the Soviet Criminal Code, dealing with responsibility in cases where the plea of insanity is raised, in part, reads as follows: "Punishment is not to be applied in the case of persons who have committed a crime while suffering from chronic mental disease or while temporarily insane, or, in general, while in such a state that they were incapable of realizing the nature of their acts. Further, punishment is not to be applied in the case of persons who, although at the time when they committed a crime, were in possession of their mental faculties, nevertheless suffer from mental derangement at the moment when the sentence is pronounced or carried into effect."

pediments to criminal responsibility. What are these symptoms?

1. A state of inability to conceive the nature and significance of an act at the time of its perpetration;

2. Mental states which, although do not preclude cognition, and thus, do not entail inability on the part of the defendant to understand the nature and significance of an act, nevertheless, compel him to undertake its commission, or lead to the omission on his part, to do something prescribed by the law (*culpa in faciendo, culpa in omittendo*), *in spite of the fact* that he comprehends its meaning and anticipates the consequences of such a commission or omission. These mental characteristics, however, in order that they may annul criminal responsibility, must be the result of a pathological derangement of the offender's psychic functions.

3. The different states of unconsciousness, and

4. Mental underdevelopment caused by bodily defects or disease.

Let us briefly analyze this construction:

185. Analysis of the Russian Construction. a. Inability to Conceive the Nature of the Act. *a.* The first symptom does not necessarily relate to the world of psycho-pathological phenomena, since a condition may be easily imagined, when the incriminated act is perpetrated by an absolutely normal person who undertakes its commission without understanding its nature and significance. For instance, X, having no knowledge of toxicology, is asked to bring to the patient in the adjoining room some crystal-like medicine. He sees in the closet several bottles containing white crystal-like substances; he takes at random one of the bottles, hands it to the patient who takes a teaspoon full of the medicine, swallows it, and shortly after dies in convulsions, having been poisoned by strychnine. X obviously did not comprehend the nature and significance of his deed which, on his part, was a *bona fide* act. Naturally, in this case, the question of insanity does not enter at all into the judicial issue.

However, we shall now refer to another example which mani-

festly belongs to the realm of psychiatry, and has to be dealt with accordingly. X shares the apartment with Y, a relative of his. Y has a gun which he loads in the presence of X, who takes the gun, plays with it, and then shoots at Y, killing him. The plea of insanity is raised; psychiatrists are summoned, and after due examination of the accused, they testify that X was unable to comprehend the nature and significance of the incriminated act, this state having been due to momentary mental dimness preceding an epileptic fit (*grand mal*). On this ground the expert, further, asserts that the defendant's reasoning faculties were paralyzed, making it impossible for him to comprehend the dangerous nature of playing with a loaded gun and the significance of pulling the trigger. When doing so, X was unable to grasp the meaning of manipulating with the weapon and could not anticipate the possible results of his movements. Once these conditions can be objectively proved, there should be no further difficulties in solving the legal problem of imputation, since X's deed would clearly come under the provisions of Section 39 of the Imperial Criminal Code.

We are confronted here with partial insanity, for epilepsy does not invariably constitute a factor, *eo ipso,* precluding responsibility. An epileptic may act with a full measure of reasoning power, and, if so, he certainly understands the nature and significance of his deeds. But in the instance above described we have alluded to that peculiar state of mind which the Ruling Senate described as " momentary dimness," frequently registered in a person's mental condition which is the prelude to the fit itself. Of course, in various forms of epilepsy, even though consciousness may retain a high degree of normalcy, the volitional mechanism may be disintegrated, in which event the psychiatrist should turn his attention to the *second* symptom indicated by the legislator.

186. b. Disintegration of Violition. *b.* The second class of psychic states primarily embraces obsessional acts which impel a person to behave in a certain manner, *contrary to his volition.* The patient realizes that what he is doing is altogether wrong;

he comprehends the nature and significance of his conduct. Nevertheless, owing to a pathological derangement of his will-mechanism, he is not in a position, or lacks energy, to control the impulsion.[16] This mental deficiency is known as "impulsion neurosis."

We shall let specialists give their authoritative description of this psychosis:

"... the group of phenomena included under the term *Obsession,* which bear a close superficial resemblance to delusions, but must be carefully distinguished therefrom. An obsession may be defined as the 'overweighting' of a particular element in consciousness. The patient complains of some idea which constantly recurs to his mind, in spite of all efforts to banish it, or he is constantly impelled to carry out some irrelevant and inappropriate action. For example, he is haunted by the idea that he is suffering from cancer; he is perfectly aware that no foundation for this suspicion exists, and that no symptom of the dreaded disease is actually present. He does not, in fact, really *believe* that he has cancer, but he cannot banish the idea from his mind, and he needs constantly to reassure himself of its erroneous character. It is this absence of a definite false belief that constitutes the essential distinction between an obsession and a delusion." [17]

Professor Charles Mercier, without giving a concrete definition of obsession, observes the following:

"In acute insanity, it is very frequent for a patient, who has been quite tranquil for minutes or hours, or, it may be, days, to start up with electric suddenness and do some irrational act, — to strike out at a bystander; to throw a chair through the window, or into the fire; to drag the table cloth, with all the breakfast or dinner things, off the table, and so forth. It is to this class of acts that the term 'impulsive' ought in my opinion to be limited, and such acts seldom come under review in a court of law, never unless they have a fatal result. They are not committed except by persons known to be insane." [18]

Finally, we may cite the view of Dr. Healy, who, by reason of his association with the Psychopathic Institute and the Chicago Polyclinic, is naturally qualified to frame a clear conception of the form of insanity in question:

[16] Further discussion of the pathogenic effect of volitional disorders will be found in Chapter IX. [17] Bernard Hart, *Op. Cit.*, pp. 33–34.

[18] Dr. Charles Mercier, "Criminal Responsibility," p. 154, New York, 1926.

"It is probable that in all cases where mental imagery and ideation become obsessional and lead to uncontrolled impulses, that a neuropathic constitution is in the background. No doubt, however, elements of environmental or physical experience enter into the total result. . . . It is the business of the medico-psychologist to be acquainted with these peculiarities of conduct, many of which do not come within the category of offenses. When the impulsions lead to offenses we have some strange developments; the association between the delinquency and sexualism may not be at all apparent. In the case of exhibitionism, which, however, has psychological aspects not easy to understand, the relation seems obvious. When it comes to certain forms of stealing, which are indulged in under sexualistic impulses, the meaning of the conduct is not at all to be read on the surface. Abnormal sex impulses may be found active in those who are certainly not to be considered in any way insane, but nevertheless in the actually insane sexualistic impulsions frequently are dominant." [19]

Dozens of other descriptions revealing the general character of obsessional acts could be cited; while all these definitions suggested by professional people are in no way identical, nevertheless, they invariably emphasize the symptom of the disintegration of the volitional functions.

For the aims of the administration of criminal justice, in the last analysis, it is of secondary import, whether the nature of the disease is physiological or purely psychogenic; or whether, as Freud maintains, "obsessions are always tranformed *reproaches* returning from the repressions, which always refer to a pleasurably accomplished sexual action of childhood."

As far as the court is concerned, the vital point of the question can be formulated thus: Was a prohibited and punishable act undertaken because the defendant was unable to control his behavior due to a pathologic derangement of his psychic faculties. Psychiatrists may disagree on the underlying cause of the compulsion neurosis. But the moment they do agree on the symptom of *compulsion,* their authoritative opinion is sufficient, from the standpoint of Russian Law, to justify the court in discharging the case and relieving the defendant from criminal responsibility.

19 "The Individual Delinquent," p. 405.

It will thus be understood that in obsessional offenses the faculty of cognition may remain unimpaired, but the functional coefficient, in the form of the volitional mechanism, is completely destroyed, and, therefore, the properly conceived ideas cannot be coördinated in such a manner as to produce a coherent and willfully planned action.

187. **c. Unconsciousness.** *c.* The group of unconscious states during which, sometimes, anti-social acts are committed, embodies a large number of psychic phenomena whose precise nature is still very little known to science. In pathological cases there seems to be one generic trait common to the whole group, that is, an almost complete *dissociation of consciousness*, the field of which is divided into two or more cardinally different trains of thought. Moreover, the *ego* itself appears alternatively, now — to be percepting and reflecting upon the real things, — now, having, as it were, retired from the visible, tangible and measurable world into the realm of imagery and fantasy, — it ceases to respond to the actualities of life, whose very significance is lost, temporarily stamped out and completely ignored.

Edgar Poe so described the psychic state of dissociation:

" They who dream by day are cognizant of many things which escape those who dream only by night. In their gray visions they obtain glimpses of eternity, and thrill, in awakening, to find that they have been upon the verge of the Great Secret."

The practical issues of criminal justice are not directly concerned with or affected by the specific causes of dissociated consciousness; from the standpoint of law it is indifferent, whether such a psychic condition be caused by somnambulism or amnesia; whether it be a manifestation of epilepsy (as in the case of latent epilepsy, reported by Dr. Gelma, see Chapter VII) or some inner conflict (" mental traume " — to use Dr. Jung's term), as a result of which normal operations of the mind are interrupted, and diffuse themselves into the stream of some bizarre dream; or, finally, if it is found to belong to the group of hypnotic phenomena.

Equally, the metaphysical approach to the conception of

unconsciousness lies beyond the immediate aims and contents of criminology. For this reason, the jurist facing the problem of criminal responsibility, arising from the plea of insanity, does not have to investigate the philosophical foundation of "*das Unbewusste,*" and he is relieved of the somewhat painful task of taking sides with either Leibnitz or Freud, or Schopenhauer or Hartmann.

It is for the alienist to deliberate upon the specific reason, or series of reasons, leading to unconscious conduct. The court is interested in the solution of one question only: was the defendant acting unconsciously, at the time when he committed the incriminated deed? — If the medical expert says that such a psycho-pathological state existed, then there is but one course for the jurist to take, namely, to acquit the defendant.

188. d. Quantitative Defect of the Mind. *d.* Finally, we come to the fourth legal symptom determined by the Russian Criminal Code, dealing with acts committed by persons whose mental underdevelopment is caused by some physical disease. The legislator did not — and for good reason — enumerate all the possible forms of feeblemindedness and cretinism which in every particular case may constitute a condition precluding criminal imputation. In fact, the very attempt to do so would undermine the clear principle upon which Section 39 has been elaborated. The quantitative debility of the mind often is a congenital condition, like in imbecility; there, — its genesis is probably physiological and results from endocrine imbalance, various defects of ductless glands, and so forth. But this mode of insanity may equally be due to advanced age, (dementia senile); and, again, there might be, as some eminent authors think, a distinct bio-chemical anomaly associated with the reduction of our mental faculties, like in dementia precox; on the other hand, however, the foundation of underdevelopment, in some cases at least, can be conceived as a strictly psychological condition.

All these and many similar problems which, indeed, are of great interest to the technique of the psycho-diagnosis, should not enter into the legal construction of criminal responsibility.

If the Binet-Simon tests, combined with the Pintner Patterson Performance Scale and other psychometric experiments, establish beyond doubt the fact that there is, in the case of the defendant, a state of marked mental underdevelopment, or complete loss of memory, or pathologic inability of planning and judgment, — the court to whom these findings are reported is furnished with a precise criterion. The verdict, then, is predetermined by the pronouncement of the alienist. Such would be the situation, if it were found that the offender is able to utter nothing but disconnected sounds and is incapable of simplest adaptation to environment.

Russian law, in this respect, draws a sharp distinction between mental underdevelopment due to simple negligence on the part of the defendant to learn the a-b-c of the social code, and, on the other hand, the psychic condition of the quantitative defect of the mind, caused by physical anomaly or disease. In the latter case the offense is devoid of its criminal nature because the delinquent does not and *cannot* comprehend the significance of the social order, as such, and, therefore, neither does nor can grasp the legal meaning of the specific transgression.

Such, in a general way, is the fundamental theory of criminal imputation, as laid down in the Criminal Code of the former Russian Empire.

Undoubtedly, as any other legal construction, it does not possess the propriety of infallibility. It might be observed, for instance, that the legislator should not have used the words: "*criminal deed*" (opening sentence of Section 39) with reference to an act which cannot be imputed; instead, perhaps, the term: "a prohibited and otherwise punishable act," might have been employed. Further, it might be said that the fourth symptom (mental underdevelopment caused by bodily defect or disease) is partly covered by the proposition framed in the first symptom (inability to comprehend the nature and significance of the offense at the time of its perpetration). Therefore, the whole theory might have been based upon *three*, and not four, cardinal principles, while the inability to understand the nature and significance of a prohibited deed, not caused by any mental

disorder, should have been dealt with in the Sections of the Code pertaining to the conception of *vis major*, necessary self-defense and other facts, either constituting mitigating circumstances or eliminating responsibility, with regard to transgressions having no affinity with psychic diseases. These critical remarks, however, largely relate to the formal aspect of the Russian doctrine and do not affect its legal substance.

189. Russian Court Practice. The Alienist. The psychological criterion of criminal responsibility, upon which the Russian doctrine rests, presupposses that the principal task of determining the exact mental state of the defendant can be adequately coped with by the psychiatrist, — and by him mainly. It is he, then, who is instructed by the law to conduct exhaustive surveys regarding all the circumstances pertinent to the subject of insanity. Both in the initial stage of criminal investigation and, at the time of the trial itself, the psychiatrist had the right to insist upon introducing new evidence which might elucidate the defendant's mental constitution. It was not uncommon in Russian practice for alienists themselves to suggest comprehensive schemes covering such subjects, the knowledge of which was likely to throw new light upon the psychologic and psycho-legal problems confronting the court. The district attorney, the coroner (*Untersuchungsrichter*), and the court itself, as a matter of routine procedure, followed the suggestions of the medical expert, pursuing their inquiry along the lines indicated by him.

On the other hand, the psychiatrist, before reaching his final decision, endeavored to form in his own mind a complete clinical picture of the case, in both its static and dynamic aspects (history, heredity data, school associations, alcoholism etc.).

The most important point, however, which should be emphasized here, is this: While it was not a law, — it was a judicial tradition to have the mental state of the defendant examined by *neutral* alienists, either appointed by the court or summoned by the coroner. Neither the prosecutor nor the attorney for the defense, *as a rule*, tried to confuse the issue of the case by inviting " their own " medical experts to participate in the solution of the question of responsibility.

As a matter of fact, according to Section 353 of the Russian Code of Criminal Procedure, it was the *duty* (not merely the right) of the coroner to investigate, through the medical expert, the mental state of the indicted, whenever suspicion arose that the incriminated deed had been committed by a mentally abnormal individual.

In other words, the law justly maintained that the judicial magistrates were not only prosecutors, " without mercy or pity," but guardians of the offender's fate, and, consequently, it was *their,* and not the *defendant's,* duty, to raise the question of insanity, whenever there was ground for such a presumption.

Furthermore, the Russian Law speaks of the *" court physician,"* that is, an alienist appointed and *paid* by the court. In complex cases the court psychiatrist, on his own initiative, had the authority to summon other specialists whose testimony, then, was admissible at the trial.

On very rare occasions — and this only at the concluding stage of the trial — the court permitted the contesting sides to invite *" their own "* specialists. Such, for instance, was the situation in the notorious Mendel Beilis trial (Kiev, 1913), when the defense hired several famous neurologists, while the state prosecutor had his own psychiatrist, in addition to the medical experts appointed by the court.

Whenever this happened, the court room promptly became the arena of rather disgraceful scenes, professional scientists disagreeing and quarrelling on every point of their respective expert opinions.

190. Jury and Alienists in Russian Practice. Still, in Russian practice, too, there remained one important problem unsolved: according to the fundamental attitude of Russian criminal legislation — much in the same way as under the Anglo-American system — the jurors were regarded as sole and independent judges of *all matters of fact.* There were no formal rules of evidence binding the jurors' verdict in any sense whatsoever. Thus, the defendant could have *pleaded guilty,* and the jury still had the perfect right to come out with a verdict *" not guilty."* The presiding judge, in his summary remarks to the jurors, could explain that on the strength of the evidence pro-

duced at the trial the defendant was insane at the time of the commission of the crime, — and still, the jurors were within their authority to answer the question of guilt in the affirmative. The jury was free either to accept or reject expert testimony. The expert graphologist might have been testifying to the genuine nature of a signature on the incriminated promissory note; in spite of this, the jurors were at liberty to render the verdict "*yes, guilty*" to a person charged with the crime of forgery provided in Section 1160 of the Code of Punishment (1885).

Furthermore, the defendant could be charged, on the strength of Section 1666 of the same Statute, with *swindling*, the presiding judge qualifying the incriminated deed as *swindling*. The jurors, however, had the right to say: "*Not guilty of swindling;* but guilty of theft for the sum over three hundred roubles." In this event the court would be in duty bound to apply Section 1655, instead of 1666, with which the defendant was originally charged.

In this way, there was no element pertaining to matters of fact — and very few applying to matters of law — which had any binding significance upon the jurors' decision.

191. Jurors and Insanity under the Anglo-American System. While the Russian construction of responsibility substantially differs from the Anglo-American doctrine, yet, as far as both the scope and nature of the jury's authority to decide upon the mental state of the defendant is concerned, the two systems are practically identical. As in Russia, in days gone by, so equally in this country the jurors are accorded the privilege of deciding the question of insanity *in toto*. Referring to this theory Professor Glueck says:

"It has frequently been pointed out by the legal authorities that the jury really has two questions to decide; (1) Was the defendant mentally sound (sane) or mentally disordered (insane) when he committed the illegal act? (2) If mentally disordered, was the affection of a kind and degree to constitute irresponsibility; that is, of a kind and degree, that, in the *jury's opinion,* came within the exemptions from responsibility as measured by one or the other of the legal 'tests'?"[20]

[20] *Op. Cit.*, p. 33.

American jurors, then, have also the right to reject the psychiatrists' testimony either in full or in part, and, accordingly, it is quite conceivable that the alienist might pronounce the defendant to have been insane at the time of the perpetration of the illegal act; the jurors, however, by the mere fact of rejecting the expert's testimony, might decide the question of responsibility in the affirmative.[21]

This, indeed, is a paradoxical situation clamoring for remedy in practically every civilized country.

Let us suppose that, in a case of inflicting dangerous wounds, a person is indicted on the ground that on the sleeve of his coat, blood has been found. The arrested pleads "not guilty." In his defense he submits the alleged fact that he had just killed a fowl, its blood soiling the sleeve.

Now, we may further assume that the whole question of his conviction hinges on the chemical analysis of blood discovered on the coat, no additional evidence of any kind in support of the contention of the man's guilt being available. The expert chemist undertakes the Hammerschlag test, suspending a drop of blood, taken from the sleeve, in a solution of chloroform and benzol. He finds that the specific gravity is not 1.040–1.065, as it should be in the case of human blood. Equally, he succeeds in determining the percentage of blood-sugar. For the sake of argument, we shall say that the proportion is fixed at 0.250. He then proceeds to compare these data with the results of biochemical tests of the blood of the victim. Here, he finds the specific gravity of blood to be 1.047, and the percentage of blood-sugar 0.096. On these grounds he definitely concludes that the blood discovered on the coat of the suspect *is not* human blood and probably *is* that of a fowl. These findings are reported to the jury, composed of averagely educated laymen, with no special chemical training, who, having rejected the expert testimony, render the verdict "yes, guilty."

[21] Compare, for instance, the jurors' verdict in the case of State *vs.* Thomas ("Red") Moran, (New York, 1927). Moran was sentenced to death for the killing of patrolmen E. Byrn and F. Daskiewitz. In July 1927 the New York Court of Appeals, on purely formal grounds, however, reversed the conviction ordering a new trial.

The chemical contents of blood, of course, *is* a matter of fact. Consequently, according to the prevailing theories and practices, the jurors are the sole judges in the matter, and, thus, they should be given the right to estimate the soundness of the expert's report as they think fit, and to the best of their ability, limited, indeed, as it may be.

One more example: In 1896 the Russian mathematician, M. Axenov, published a book entitled: " Transcendental — Kinetic Theory of Time," in which he formulated a theory that the fourth dimension is the path of time, whereas our psychic motion along this path is time itself. An analogous principle was later, in 1904, proclaimed by Einstein, while in 1908, at the Congress of Students of Natural History, in Köln, it was elaborated by Minkovski.

Let us, then, suppose that the fundamental conception of time, as the compound function of space and motion, has been originally expressed by Axenov; he, therefore, might be claiming the chronological priority in the discovery of the relativity theory (as far as time is concerned).

Now, if we should imagine a law suit arising between Axenov and Einstein in connection with some copyright controversy or literary fraud, we might conceive of a situation where twelve jurors would be called to decide upon several questions; for instance: *a.* whether or not in 1896 Axenov had actually published his book on the relativity of time; *b.* whether or not, in 1904, Einstein had formulated his theory of relativity; *c.* whether or not Einstein's conceptions, from the standpoint of mathematics, are identical with Axenov's doctrine.

In a case like this, it would be natural for the court or the contesting parties to summon eminent mathematicians who would have to make a parallel examination of the two theories, and thereupon present their views to the jury. The matters submitted to these experts would certainly be *matters of fact.*

Next, we shall suppose that the scientists testify to the effect that the mathematical meaning of Axenov's work substantially differs from that of Einstein's theory. On the strength of these findings they would assert that Einstein's speculations have been

worked out independently from the views of the Russian philosopher.

After due deliberation, the jurors, taking advantage of their right to eliminate the expert's testimony, might come out with a verdict making Einstein responsible for having borrowed his doctrine from Axenov, and rendering a judgment in favor of the latter.

These two examples are certainly paradoxical, and common sense, we believe, would impel the jurors to take into consideration the opinion of the chemist in the first case, and that of the mathematicians — in the second.

192. Dean Wigmore's and Dr. White's Views on the Psychiatrists in American Courts. But how much more intricate is the problem of lunaticism in relation to the legal fact of criminal responsibility? — Everyone familiar with psychiatry and neurology is well aware that such questions as psycho-genesis, the origin of insanity, the intrinsic condition of the unsound mind and the functional derangements occurring in the brain, as a result of neural diseases, *are immensely difficult subjects*. Their investigation requires highly qualified expert labor and profound knowledge.

Under the American system the task of the alienist appears to be especially difficult, owing to the legal presumption that, in theory at least, he is not supposed to make his opinion dependent upon the *facts of evidence,* as they unfold themselves in the course of judicial proceedings. There is, then, an artificial barrier erected between the labors of the medical expert and the body of evidence laid down before the court.

Dean Wigmore, referring to this subject authoritatively analyzes the peculiar construction of the theory, which places the psychiatrist in the awkward position of being officially unaware of the existence or nonexistence of such data, as necessarily have an immediate bearing upon the nature itself of his opinion. In this connection Professor Wigmore speaks:

". . . What happens to this theory when the intricate question of insanity is to be decided — a question that can only be answered by considering myriads of facts and conditions running back to early childhood; data, which in their presentation hypothetically, are

partially unproven and even contradictory? And what happens to it, further, when it is remembered that the expert in insanity cases has observed and probably heard, if not himself examined, the defendant? Can he then, by a feat of psychological legerdemain, keep the minute hypothetical data clearly apart in his mind from the impressions gained by him at first hand and from his whole training and experience? Do not all these factors enter into his final 'Yes' or 'No' answer to the hypothetical question? But see People *v.* McElvaine, 121 N. Y., 250 (1890), where it is said that 'when specific facts, either proved or assumed to have been proved, are embraced in the question the jury are enabled to determine whether the answer to such question is based upon facts which have been proved in the case or not.'" [22]

But whether confronted with the formal rules of evidence of the Anglo-American system, or dealing with the general principle of the Russian theory, stipulating that no legal maxims shall bind the jurors in their decisions on matters of fact, we find that in the last analysis, the results of criminal proceedings are practically identical, for in both constructions, although founded upon different premises, the jurors have the authority to disregard the opinions and conclusions of expert witnesses.

Such a condition — we insist — is impossible. Historically and psychologically, perhaps, there may be some ground for conferring upon the jurors the unnatural role of *experts* qualified to supersede by their judgment the *expert* knowledge of court *experts*.

Dr. White is justified in his assertion:

"The main difficulty about the present method of procedure is that it is not in fact what it pretends to be. The method of trial of a criminal case before a jury is in the nature of a combat in which two opposing forces are lined up against each other and the battle goes to the strongest. The judge acts as a sort of referee whose business it is to prevent fouls and the taking of unfair advantages. Now into the arena where this battle is taking place the expert witness is introduced. He is hired and paid by one of the parties to the issue, his direct testimony is given in response to the attorney representing that party. The attorney representing the opposite side then under-

[22] Professor John H. Wigmore, "System of Evidence in Trials at Common Law," Second Ed., Vol. I, p. 1078.

takes to tear to pieces the contributions to the evidence which he has made in favor of the side for which he was employed. This is essentially and fundamentally a partisan conflict, and the expert witness is asked to do something that society does not ask of a man in any other capacity. It asks him to preserve the same judicial attitude of mind which is expected of the judge on the bench and to answer all questions fairly and impartially and free from prejudice." [23]

Herein, perhaps, lies the psychological explanation of the negative attitude frequently evinced by the jurors with respect to testimony in general and alienists' opinions in particular. If, as Dr. White remarks: " the whole trial is nothing but a partisan conflict," the two opposing camps staging sensational tournaments with hired psychiatrists wasting their skill on befogging the issue, it is not surprising that the jurors should often be tempted to ignore altogether this particular element of the criminal trials.

More recently a similar opinion was voiced by George M. Kline, President of the American Psychiatric Association, when addressing the eighty-third annual meeting of that body, he stated:

". . . The fact that experts are usually introduced as partisan, has done much to undermine the confidence of the laity in the value of expert testimony. As a result such testimony has fallen into disrepute and psychiatry has suffered in the eyes of the courts and the public. It has been of interest to note how many bodies are to-day giving attention to means of restoring expert testimony to a condition which may demand the respect of the community and the confidence of the courts." [24]

The whole problem would assume an entirely different aspect, if both prosecution and defense were prohibited by the law from employing their independent experts. In this event they would have to be appointed by some neutral body, be it the court itself or any national organization of scientific repute and unquestioned moral standing, such as an Institute of Scientific

[23] Dr. William A. White, " Insanity and the Criminal Law," p. 56, New York, 1923.

[24] See Dr. Kline's presidential address, in *The American Journal of Psychiatry,* Vol. VII, No. I, p. 9, July 1927.

Criminology, — remaining outside and above the controversial interests of the contending parties.[25]

Then — but only then — it would be proper to insist that expert opinions, rendered by impartial and enlightened specialists in different departments of human knowledge, not only be taken into consideration by the jury but that they should prominently enter into, and form part of, the verdicts themselves.

193. Nature of Psychiatric Analysis. The presumption that it is possible to segregate the data, upon which expert opinion must be founded, from evidential facts of which the jurors are sole judges, — is neither correct in theory, nor capable of being consistently pursued in practice.

Crime, in the process of its performance, involves three orders of things:

a. The inner world of the criminal himself (the genesis of the mental attitudes toward the proposed offense, etc.)

b. The physical or outward world upon which the criminal will projects itself, and within which it produces a series of changes, whether they be psychic variations or psychomechanical displacements, and

c. The entire amount of reactions of the outward world against the crime and its material results.

All phenomena forming part of this joint picture stand in some strict interrelation with and to each other, so that the logical sequence of causes and consequences — from the moment of the crystallization of the criminal intent up to the concluding stage of the trial — represents an uninterrupted line of events which, in its totality, enters into the judicial analysis and its final aim — the pronouncement of the verdict.

If the work of the medical expert is to be efficient, it must embrace *all* the essential facts which, in their *conjuncture,* tend to furnish the necessary basis for the correct solution of the main question, that is, the mental state of the defendant at the time of the commission of the incriminated act.

[25] In France, on the strength of Articles 1 and 2 of the Decree of November 21, 1893, medical experts are appointed by the Courts of Appeal, in executive session, for the period of one year.

The psychiatrist cannot — at least should not — confine himself to the examination of the offender himself: whenever the case is not absolutely clear from the outset, the habitual psycho-medical tests failing to determine either the specific nature of the disease, or the precise condition of the individual at the time of the perpetration of the offense, — it becomes imperative for the expert to extend the scope of his inquiry, by undertaking a study of the whole body of evidence assembled in the course of the criminal investigation. This means, in turn, that the alienist is *compelled* to consider the *curriculum vitae* of the defendant, as protrayed by his relatives and witnesses who had known him prior to his crime. In this connection, further, it may prove helpful to the expert to familiarize himself with the different letters written by the accused and put in evidence. Both the contents of such documents and their handwriting may disclose many important things, like ideational inertia, marked forms of ataxy, systematic omission (" falling out ") of syllables, indications of pseudographia, etc.,[26] — all of which are important symptoms of some notorious mental disorder (polyneuritic insanity, mental shocks, early stages of dementia paralytica, and a number of other diseases).

In instances like these, the psychiatrist finds himself in the very midst of " evidential facts," which, on the one hand, inevitably must exercise a direct influence upon his diagnosis, while, on the other hand, their scientific significance — because of the extreme complexity of the phenomena themselves — hardly can be fully conceived by the jurors. Consequently, when dealing with obscure and indeterminate forms of mental deficiency, there *always* remains a certain portion of the information, directly derived from or pertaining to evidence in the case, which *must* enter into the final opinion of the alienist, and yet *cannot* be appreciated and clearly comprehended by the jurors.

[26] Consult on this subject, Professor I. Sikorsky's " Foundations of Theoretical and Clinical Psychiatry," pp. 589, 590, Kiev, 1910 (In Russian). The criminalist, however, must be guarded against the tendency of some psychiatrists to overestimate the symptom of deranged handwriting, especially when the anomalies therein observed are either negligible or conspicuously inconclusive. Such are, for instance, the exhibits of alleged pathologic handwriting, photographically reproduced by Dr. Adolf Lenz, in his " *Grundriss der Kriminalbiologie*," pp. 83 and 84, Wien, 1927.

Of such matters of fact, whose nature cannot be understood by the jurors, they manifestly cannot be competent judges.

Nevertheless, E. N. Zoline is quite right when he asserts that in the United States

"Questions to medical witnesses requiring their opinions are admissible where the assumed facts recited in the questions are warranted by the proof in the case, and the evidence sought to be elicited is of a character justifying an expression of opinion by witnesses. *The jury, after all, are at liberty to give to such evidence such weight as in their judgment it is entitled to.* . . . The defendant is not entitled to an instruction that opinions of medical experts admitted in evidence, *if uncontradicted by other experts,* must be accepted and acted on by the jury as absolute proof." [27]

Undoubtedly, it should be within the right of the jury to acquit a murderer in whose defense the plea of insanity was raised, in spite of the alienist's opinion to the effect that at the time of the alleged transgression the defendant was sane. But the *ground* for such verdict ought to be based upon considerations *other than* the question of the mental condition of the defendant. The jurors, for example, might say: While we accept, without further discussion, the opinion of the medical expert to the effect that X was sane at the time when, it is alleged, he committed the crime; nevertheless, we find no evidence whatever that *he* has been the author of the incriminated deed.

The sharp line which we draw here between the two forms of acquittal is important, for there is a cardinal difference between discharging a person because of his alleged insanity and his acquittal by reason of the fact that he did not commit the crime. With the present-day attitude of the rank and file towards the alienation problem in criminal cases, even though

[27] See E. N. Zoline, "Federal Criminal Law and Procedure," Vol. 1, § 396, pp. 326, 327, Boston, 1921. Furthermore, in the case United States *vs.* Chisolm, the Circuit Court held: "A jury should not capriciously or recklessly disregard the advice of medical men of experience in dealing with diseases of the human mind, and the advice of physicians as to such matters should be carefully weighed, but the final responsibility in arriving at a conclusion as to the mental condition of the prisoner rests upon the jury." (Fed. Rep., Vol. 149, pp. 289, 290.) Compare also, the case State *vs.* Pike. Chief Justice Perley instructing the jury, among other things, stated: ". . . all symptoms and tests of mental disease are purely matters of fact to be determined by the jury."

a man is found not guilty due to his psycho-pathological state, there usually remains a shadow of suspicion that "*after all*, Jim knew what he was doing." If, however, the court finds no evidence against the particular defendant and acquits him *on this* ground, then, after awhile at least, public opinion becomes reconciled to him, and his life is no longer made miserable by the little street gossip that sometimes drives suspected people insane.

194. Witness Testimony in Insanity Cases. In addition to the testimony of the medical expert, the jurors often have to listen to witnesses telling their stories regarding the mental faculties of the defendant. This method of elucidating the psychiatric problem hardly ever brings satisfactory results, since it is largely dependent upon subjective impressions and false premises of persons with no special training for the task they are called to tackle. Among these, — amateurish "psychologists" are about the worst: they solve the most difficult psycho-pathological riddles with astounding ease and avowed incompetence.

Thus, the jurors hear a number of witnesses summoned by the state and the defense, who give their contradictory views on the moral character and behavior of the defendant. A woman, for instance, puts herself on record as having "always suspected there was something wrong about Joe." Next, a lad takes the stand and tells the court that "there is nothing the matter with Joe" and that "he is a regular fellow." A third witness declares the conduct of the defendant to have been "perfectly normal," "*except*" that she has never known him to have been an enthusiastic "church-goer." And so forth.

On the top of such testimony, the court hears the two rival psychiatrists, — both rather eminent physicians. One of them reports to the jurors that the offender is positively sane, while his distinguished colleague utters some rather obscure neurological formula, suggesting that the defendant suffers from "axis-cylinder degeneration with histological changes, common in cases of paresis," and asserting on this ground that he is insane.

It goes without saying, that performances of this kind do not further the solemn aims of the administration of criminal justice. The psychic mechanism of the anti-social act; the intricate mental process which bridges the two extreme points of the maturation of the criminal idea — its genesis and final realization; the fundamental attitude of the defendant towards the social order which he attacked; — all these questions are left unanswered, since the "partisan conflict" with its confusing and artificially beclouded issues, with its formal rules of evidence, in all too many cases fails to reënact in the minds of the jury the *inner* picture of the adjudicated act.

195. Suggestions of Changes in the Procedure Involving the Insanity Plea. These observations, we believe, justify the contention that unless some orderly and strictly scientific procedure of testing the mental state of the defendant, and reporting thereon to the court, is put in operation, the trials will continue to be under the danger of being transformed into "comedies of errors" with tragic consequences to the defendant, and disastrous from the standpoint of the social order itself.

The plausible solution of the problem seems to be this: an unprejudiced medical expert (psychiatrist), appointed and paid by the court or some *independent* scientific body, should be given the right to examine, in an exhaustive manner, *all* the factors which, in their totality, are likely to reproduce an intelligible clinical picture of the mental condition of the defendant.

The data, which in every particular case might be requisite to the psycho-medical diagnosis, represent widely different fields of inquiry, ranging from the comparatively simple physical examination of the accused, — to most complex bio-chemical and psychological tests.

Having completed his study, the expert should be asked by the court precise questions, based upon unmistakable *psychic* symptoms, the presence or absence of which would conclusively predetermine the *legal* issue of responsibility. For instance, the question can be formulated thus:

Was the defendant, at the time of the alleged perpetration of the incriminated act, able to control his actions, and if not, was this state due to some derangement in his mental constitution? — Or,
Were the mental faculties of the defendant at the time of the alleged commission by him of the incriminated act, impaired to such an extent as to preclude the realization on his part of the nature and meaning of the offense; if so, was this state of mind due to some bodily defect or disease?

If criminal procedure were allowed to follow this course, then it would be proper to attach to the opinion of the alienist the legal presumption of a duly established and proved fact, which, for this very reason, would have to enter into the jurors' final decision as one of its constituent parts.

The court, on the strength of this theory, would merely take "judicial notice" of the facts reported by the psychiatrist, retaining, of course, the right to question the expert on the methods which he had employed in the analytical study of the case.

Summing up the remarks made in this chapter on the interrelation of mental deficiency and criminal responsibility, it might be said:

196. Summary Remarks: I. The problem of criminal imputation, in cases where insanity is pleaded, still seems to be in a state of confusion.

II. Anglo-American practice continues to adhere to the indeterminate symptom of "right and wrong," making the presumption that the defendant should be held irresponsible for the incriminated act, if and when it is proved that, at the time of its perpetration, he was unable to discriminate between these two moral concepts.

III. The Anglo-American system, further, maintains that the alienist, called to testify on the mental condition of the defendant, can do so without taking into consideration the so called evidentiary facts, *except by inference that such have been stated to him hypothetically*. Such a construction places the medical expert in an awkward position, inasmuch as, in nine cases out of ten, it is impossible for the psychiatrist to overlook those facts which have been learned by him "at first

hand," and whose scientific significance, therefore, inevitably influences the mental operations leading to his final "yes" or "no."

IV. For the protection of the mentally diseased, it is desirable to simplify the procedure of "pleading insane," and especially to adopt the doctrine that the act of raising the issue of insanity is not only the privilege of the arraigned, but should be considered the *duty* of the state, whenever there is ground to suggest that the offense was perpetrated by a psychopath.

V. It is time to abolish the embarrassing practice, prevalent in both the Anglo-Saxon countries and Continental Europe, of permitting the prosecution and defense to hire their respective alienists; by reason of being paid by the parties hiring them, it is not uncommon for these experts to render prejudiced and one-sided opinions, which are, *eo ipso,* discredited and looked upon with suspicion by the general public.

VI. Owing to this condition, the jurors are often inclined to underestimate, or even completely ignore, the psychiatrist's opinion; this negative attitude completely defeats the purpose of the administration of criminal justice and, sometimes, causes irreparable damage to the defendant.

VII. The situation can be materially remedied by:

a. Prohibiting the contending parties to hire their own expert-alienists, who should be appointed by a neutral body standing above and outside of the inevitable conflict between prosecution and defense;

b. Requiring the psychiatrist to present an all-embracing study of the mental constitution of the defendant, in the light of the latest discoveries in the fields of psycho-neurology, biochemistry, biology and psychology; and

c. Taking, as it were, judicial notice of the expert's opinion on the mental state of the defendant, making it a constituent part of the jurors' verdict.

VIII. The questions propounded by the court to the psychiatrist should contain simple symptoms enabling the expert to give comprehensive and conclusive answers, describing the actual mental state of the defendant at the time of the perpetra-

tion of the incriminated deed. The nature of the expert opinion should, then, determine the solution of the legal problem of criminal responsibility.

It is anticipated that some of the suggestions made here may raise a number of technical and theoretical objections; and, principally, it might be remarked that our construction of responsibility, in its practical application, would "usurp" a fraction of the jurors' authority.

We think, however, that it is an erroneous policy to place twelve men, selected at random, in the position of independent judges of facts whose nature, legal significance, and psycho-biological effect they usually cannot comprehend.

The assumption that the jurors, because they are jurors, are capable of conceiving the intricate elements of psychic disorders, — is an arbitrary inference and a legalistic atavism. The continued adherence to this backward theory is neither justified by science nor vindicated by the present-day confusion, arising from the whole problem of criminal responsibility in cases where insanity is pleaded.

CHAPTER IX. — CRIME AND MENTAL DISEASES

197. Criminology and Psychiatry. 198. Will in its Relation to Insanity and Crime. 199. Volitional State and Volitional Act. 200. Intention and Attention. 201. Disintegration of the Will-Mechanism. 202. Dissociation, its Early Signs in the Fatigue Neurosis. 203. Will-Disintegration and Anti-social Conduct. 204. Hysteria and Hysterical Fits. 205. Paranoia. 206. Lack of Cognition and Anti-social Conduct. 207. Dementia Senile. 208. Dementia Senile and its Relation to Crime. 209. Feeblemindedness (Imbecility, Cretinism, Idiocy). 210. Criminality Among the Feebleminded. 211. Dementia Precox. 212. Mental Processes in Dementia Precox. 213. Nature of Dissociated Consciousness in Dementia Precox. 214. Negativism in Dementia Precox. 215. Suggestibility. 216. Dementia Precox, Delusions and Morbid Impulsiveness. 217. Homicidal Impulsiveness in Dementia Precox. 218. Epilepsy. 219. Epilepsy and Egocentricism. 220. Epilepsy and the Sexual Undercurrent. 221. Degrees of Imperception in Epilepsy. 222. Epileptic Equivalents. 223. Psychic States in Epilepsy. 224. Alcoholism and Crime. 225. Statistical Data. 226. Alcoholism and its Effect Upon the Mind. 227. Alcohol as a Habit. 228. Chronic Alcoholism.

197. Criminology and Psychiatry. Criminology is not expected to investigate the problems distinctly belonging to other departments of human knowledge, such as psychology, physiology, psycho-pathology and kindred disciplines; for they cultivate their special fields of inquiry and have an independent existence of their own.

Indeed, it is for neurology, and not criminology, to "explore the brain," determining its structure and functions, or to analyze the composition of the cortex and ascertain the number of electrons in an atom of hydrogen or nitrogen. It is the province of bio-chemistry, and not criminology, to examine the specific gravity of the blood and to discuss the significance of the electrical properties of colloids or crystalloids.

If we wish to discover the nature of reflexes or understand the work of the visceral organs, physiology should be called in council. Likewise, despite the close affinity in some cases of criminality with mental derangements, it is for psychiatry, and not criminology, to study the laws governing the immensely complicated mechanism of those phenomena which form the substance of insanity.

On the other hand, however, criminology, dealing with the person of the delinquent, his changing psychic states and temperamental dispositions, is compelled to borrow diverse data from those sciences which, in one way or other, focus their attention on the bio-physical and neuro-psychic constitution of man, whether in its normal or abnormal aspects.

On this ground, for instance, it was found necessary, when the formation of criminal habits was examined, to allude to certain biological principles and psychological notions, which tend to explain the processes leading to, or resulting in, the genesis of automatic acts.

Now, the interrelation of crime and insanity can be comprehended only in that measure in which neurology and psychopathology are able to give us precise information regarding the nature and major symptoms of mental deficiency. For the criminalist it is neither advisable nor even possible to advance his own independent theories on a subject of which he obviously cannot be a competent judge.

Inasmuch, however, as psychopathic phenomena are preeminently anti-social, they have, or may have, a common root with criminality, and, therefore, should not be ignored by the criminologist, while the psychiatrist must necessarily take into account the important fact that mental disturbances frequently find their outward expression in prohibited and punishable deeds. Besides, the alienist has a direct and practical interest in the aetiology of crime in all cases which involve the plea of insanity and raise the legal problem of imputation.

In this way, there is a natural reason for both psychiatry and criminology to explore, although from different angles, one and the same group of phenomena. But the modest task unfolding itself before the latter is restricted to the analysis of those general psycho-pathological elements which, by facilitating the structuralization of the criminal propensity, bring the defective in collision with the social order.

198. Will in its Relation to Insanity and Crime. In this connection, the questions to be considered are these: 1. What elements constitute the psychic contents of normal social behavior, and 2. What derangements or anomalies, occurring in

the psychic mechanism, cause, or at least are likely to bring about, the commission of anti-social acts.

The individual crime being, according to the author's understanding, a *willful* transgression, it will be necessary, in the first place, to review briefly, the psycho-physical factors interfering with the functions of our volitional apparatus, whether by paralyzing them, or making them abnormally intense, or diverting them towards an object not actually desired.

As explained heretofore, the metaphysical question of the existence or non-existence of will is a subject which does not affect the immediate aims of criminology. For practical purposes, the phenomenon of will is postulated and accepted as a *petitio principii*, without which human conduct can scarcely be understood. In fact, were we to presume the opposite hypothesis, that is — absolute determinism — all legitimate anticipation of the possible modes of behavior would be inconceivable.

199. Volitional State and Volitional Act. In the long range of human acts there are many which are entirely devoid of the volitional element. Such are the different muscular contractions in reflexes, the compound functions of our visceral organs, the unlearned and unconscious responses to sub-instinctive propensions, all purely automatic phenomena and the simplest forms of perception.

Still, in man's behavior there are elements which are not only desired (like in primitive emotional cravings), but planned beforehand, and intended. Therefore, the relation between the act itself and its anticipated effect are understood by the mind, while the state of anticipation includes also the desire of achieving the ultimate result thus conceived.

As a rule, the intention to commit an act presupposes the *selective* element which, as has been observed by Professor James, makes voluntary movements secondary, and not primany, functions of our organism.[1]

[1] *Op. Cit.*, Vol. II, p. 487. The rational nature of volitional acts is recognized by many distinguished thinkers. Among others, Dr. C. J. Jung says: "Our will is a function that is directed by our *powers of reflection;* it depends therefore, upon how our powers of reflection are constituted. In order to deserve its name, reflection must be *rational*, that is, according to reason." See Dr. Jung's "Collected Papers on Analytical Psychology," p. 397, Second Ed., London, 1922. For the practical purpose of our investigation it is of no immediate

The operation of planning, in fact, is unthinkable without selecting or choosing, the final choice becoming an integral part of the intent itself and its final object.

In the volitional *state,* then, we perceive three distinct characteristics:

a. The element of consciousness;
b. The process of selection; and
c. The teleologic symptom, which is the compound function of the former two.

Such are the constituent psychic ingredients of the volitional *state.* But this mental condition is not equivalent to the phenomenon of a volitional *act.* I may *will,* and yet not *act;* I may *act,* and yet not *will.* For the performance of a volitional act, a specific *effort* must be made before the potential energy of the volitional state may be converted into the dynamic discharge of the accumulated energy, and produce the volitional act.

It must be remembered that in normal willful behavior there is a distinct coördination between the mental images which accompany the volitional states and the mechanisms perpetrating the intended acts. The group of movements which we thus perform is, more or less, predetermined, or conditioned by the sum total of our previous experiences. This automatism is a device of economy provided by nature herself, while the order or sequence of such movements belongs to the subconscious realm.

Says Umow:

"Automatism is very valuable in that without it the increase in the measure of conscious conduct would be seriously hampered, or even made impossible. It produces considerable economy in the intellectual work, relieving the individual of the necessity of going through, or repeating, the experiments and observations accumulated not merely by himself but equally by a long range of ancestors." [2]

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importance to analyze Jung's conception of irrational and accidental behavior, although the observations made by him continue to exercise a marked influence upon the prevailing theories of subconscious and unconscious conduct.

[2] Professor N. A. Umow, *Op. Cit.,* pp. 212, 213.

Yet, even in perfectly normal individuals we observe a degree of discoördination between the volitional state and its outward expression in the form of the purposive act. Referring to the subject, Dr. Dwelshauvers says:

"We have precise consciousness of the aim to be achieved, but the motor mechanisms at our disposal, in relation to the conscious desire, show a certain independence; they evade us, more or less, so that we are unable to anticipate with preciseness what their reactions will be."[3]

There is nothing intrinsically abnormal in the discrepancy described by Dwelshauvers. But in some forms of mental disorder, especially those involving disintegration of the higher brain centers, the disharmony between the work of the two mechanisms — the conscious and subconscious — grows so acute that either: 1. a thing willed becomes impossible of realization, the motor apparatus refusing to serve the conceived desire, or 2. a person is impelled to act in a certain manner, contrary to his intention, and notwithstanding the fact that the anticipated effect of his act is not desired.

These remarks are sufficient to establish a general notion of the nature of will in its two phases: the volitional state and the volitional act.

200. Intention and Attention. An additional consideration regarding the selective process may, however, be mentioned. A normal person, undertaking the commission of a volitional act, is usually capable of performing the selective operation of choice and adjust his mind to the state of concentration or purposive accumulation of volitional energy. For this he is supposed to have sufficient patience and perseverance; he is able to fix his attention, for as Dr. Lorand maintains: "attention is the indispensable pre-condition of the ability of perception," while, in the absence of such ability, "nothing can be perceived."[4]

[3] *Op. Cit.*, p. 88.

[4] See Dr. Arnold Lorand, "Defective Memory, Absentmindedness and their Treatment," p. 8, Philadelphia, 1926. The assertion that nothing can be *perceived* without the ability of concentration or without volitional attention is not quite correct: the initial forms of perception are not dependent upon the

Further, in the normal volitional act the motor mechanism is, *more or less*, under control of the individual and, consequently, despite the slight discoördination between the aim conceived and the physical modes of its execution, the act is finally performed and the realization of the intent thereby achieved.

201. Disintegration of the Will-Mechanism. Now, what happens to will if the individual is affected by some mental disorder?

Let us take a *mild* form of neurasthenia or primary fatigue neurosis. The symptoms of this disease are authoritatively described by Jelliffe and White as follows:

"This condition is known as a primary fatigue neurosis and has certain quite characteristic and constant symptoms which are in the main a feeling of pressure on the top of the head, more or less insomnia, spinal irritation, with perhaps pain in the back, certain paresthesias, and gastro-intestinal symptoms, easy fatigability, *difficulty in fixing the attention*, and in application to work, emotional irritability, and some depression." [5]

In simple neurosis we are confronted with the genesis of a mental state, which, if left to develop, may lead to grave consequences and take the form of anti-social acts.

202. Dissociation, its Early Signs in the Fatigue Neurosis. The difficulty of concentration experienced by the patient is the beginning of the disintegration of the volitional apparatus. The field of consciousness is affected by the early, and as yet not clearly distinguishable, signs of dissociation. The psychic oscillations, observed in the normal mind, assume here a state of *twinkling*. For these continuous and unprovoked variations there seems to be no sound reason: the slightest impression from without suffices to cause a *marked* diversion of attention. But because there is a continuous stream of impressions, pouring into consciousness, and the mind fails to concentrate upon

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volitional element. Such are all the sensory perceptions which are registered by the infantile mind. However, there is no need here to enlarge upon this subject.

[5] *Op. Cit.*, p. 862. Italics ours. Compare also with Gould and Pyle's "Pocket Cyclopedia of Medicine and Surgery" under *Neurasthenia*. The authors for some reason do not mention the symptom of "difficulty in fixing the attention and application to work" which, however, is not only important from the point of view of psycho-pathology, but is a *constant* neurological symptom.

any specific perception, — attention is in a state of chronic dispersion.

Owing to this pathological condition, the trains of thought assume an irregular and purposeless motion, which strongly interferes with the synthetic operations of the mind. The material requisite to normal integration, all the time slips out of the field of consciousness, and disappears just as easily as it may have appeared an instant ago.

In addition, not seldom, the brain is invaded by such impressions as are not conveyed from without, but rise from the subconscious region, — again, without being evoked by a specific stimulus. In a case of this kind, the mental image is not confined, as it were, to the chromatic spectrum of thought, but is constantly supplemented by "ultra-violet" or "infra-red" spots (unconscious and subconscious data) which legitimately belong to the invisible, or *chemical* spectrum, and therefore, *normally,* should not participate in our mental activity at all. Such a state having been reached, the mind is in danger of becoming deranged, even though temporarily.

Many forms of psychopathia sexualis have their origin in this mental condition, the reason therefor being that much of the subconscious material is composed of vague sexual urges which, under ordinary circumstances, are suppressed by conventions of all kinds and kept under control of social propensions; so when these blind impulses begin to infect the fields of our consciousness, the prognosis of more serious developments is usually quite justified.

Criminology is obviously incompetent to give authoritative answers to such questions: Is neurasthenia a purely mental disease; or is its underlying foundation of a physiological nature? Is the so-called katatonial symptom-complex, as suggested by Dr. Fankhauser, dependent upon bio-chemical changes in the *sensibilisierende Substanz;* or should it be listed under the neuro-vegetative syndromes producing hallucination phenomena (*hallucinations kinesthésiques*)? [6] Equally, there is no need for us to determine here to what extent the opinion maintained by some authors is correct that the primary cause

[6] See Dr. Fankhauser, *Op. Cit.,* pp. 68–69.

of dissociative phenomena, accompanying neurasthenic dispositions, necessarily have a sexual substratum. Notice should be taken, however, that Krafft-Ebing, for instance, specifically refers to the fact that acts of exhibitionism are likely to be committed as the result of neurasthenia and the derangement of the volitional apparatus. Reporting the story of the patient "L" (case 203), he says:

"He behaved himself very well, and expressed great regret for his sexual crimes, which he explained in this wise: though not a drinker, he occasionally had an impulse to drink. Soon after beginning, congestion of the head, vertigo, restlessness, anxiety and oppression came on. He then passed into a dreamy state. An irresistible impulse now forced him to expose himself; and he then experienced a feeling of relief and breathed more easily. When he had once exposed himself, he knew nothing more of what he did. . . . A clinical group that very nearly approaches the epileptic exhibitionists is made up of certain *neurasthenic* individuals, in whom, likewise, there may occur attacks (epileptoid?) of imperfect consciousness in connection with a feeling of apprehensive oppression; and with this sexual impulses may be associated, resulting in acts of exhibition having an impulsive character."[7]

203. Will Disintegration and Anti-social Conduct. In the case of "L" the genesis of the criminal intent was coincident with the appearance of distinct pathological symptoms in the functions of the will-centers (irresistible impulse). The consequent conversion of the delinquent tendency into the offense itself, was obviously due to the all-embracing decomposition of the volitional mechanism, on the one hand, and the psychic condition of dissociated consciousness on the other.

204. Hysteria and Hysterical Fits. In hysteria the phenomenon of dissociation becomes a dominant condition.[8] The patient is in a state of constant agitation whether he shows it or not. The disease involves grave functional disturbances of the mind, and, according to the prevailing view (Charcot —

[7] *Op. Cit.*, pp. 510–511.

[8] Dr. Edward E. Mayer says: "Hysteria is more than dissociation, however. The ego-projections and identifications of the psyche in it are often not dissociated but are shifted out-of-awareness and their affect energizes reflex processes without any dissociation. Many speak of this energy shifting as a dissociation in itself, however." See Dr. Mayer's article "Hysteria," in Vol. VI, No. 3, January 1927, of *The American Journal of Psychiatry*, p. 527.

Moebius — Strumpell),[9] it is of purely psychogenetic nature. It must be understood, however, that in hysterical and psycholeptic states there may be no organic or constituent mental deficiency, while the ideational content of consciousness, relatively speaking, may be only slightly below normal. Nevertheless, the criminogenic effect of hysteria is a commonly recognized fact which is due, in the first instance, to the disintegration of the will-centers. The volitional functions are ill-directed: the patient is either unable to resist an impulse which he knows to be wrong, or else his emotional activity is aimed at something which is not real. In this case, the individual is in equal danger of perpetrating an anti-social act and, thus, coming in conflict with the law.

According to the author's observations, the medico-legal diagnosis of hysteria, more particularly in its earlier and formative stages, sometimes, presents considerable difficulties due to the absence of clearly defined psycho-pathological symptoms in the behavior of the suspect: in fact, his acts may reveal nothing "abnormal," retaining a purposive character, although they often assume a distinct anti-social orientation and culminate in the commission of various crimes, such as false accusations, thefts, cruel treatment of children, and so forth. Very often the perpetration of the delinquent deed is prompted by the motive of revenge, and then an experienced psychiatrist may easily discover a disproportion of the alleged grievance to the psychological reaction on the part of the transgressor. Speaking generally, in doubtful cases of early hysteria the medical expert should base his diagnosis on clinical observation rather than on the analysis of the single incriminated act.[10]

The symptoms of fully developed hysteria are manifold.

[9] Dr. Dubois of Berne, is also one of the prominent exponents of that conception, according to which hysteria is a purely psychological derangement manifesting itself in a series of "false mental representations," based upon excessive suggestibility. He says: "Adults who preserve this incredible suggestibility and become hysterics denote thereby their mental debility. The hysterical woman has an infantile mentality, she suffers from hysterical infantilism. The hysterical man . . . possesses a manifestly feminine mentality." (See Dr. Dubois' book "*Les Psychoneuroses*," p. 200, Paris, 1909.) Equally, Babinski defines this disease as a psychic state during which the patient is capable of auto-suggestion.

[10] On this important question interesting observations will be found in Dr. Edward von Hofmann's "Manual of Legal Medicine," pp. 845–848, 5th Russian Ed., St. Petersburg, 1908.

Acute pathologic conditions, which have many traits in common with epilepsy, entail complete, although only transitional, loss of consciousness and sometimes lead to convulsive seizures whose outward manifestations are similar to those observed in the epileptic *grand mal.*

Professor McDougall thus describes the hysteric fit:

Case 14.—"A game young soldier had fought very gallantly until wounded in one foot. When convalescing from the wound he began a long series of 'attacks,' each of which closely resembled the rest. Sometimes the 'attack' came on in his sleep, sometimes during waking. He would suddenly fall to the ground, *seem to be utterly unaware of his surroundings,* and would re-enact, in the most dramatic way, a scene lived through in the trenches but forgotten; in his scene he took a very active part in repelling an attempt of the enemy to rush the trench; he worked a machine-gun, shouting in the utmost excitement to his comrades. As the excitement subsided the dramatic actions gave place to mere spasmodic movements and contortions, which in turn would subside and leave him sleeping quietly." [11]

The *physical wound,* in this case, translated into the terms of psycho-pathology, becomes a *mental wound,* or a complex, whose artificial repression produces a psychic reaction in the form of a fit. As in mechanics, there seems to be here a direct proportional relation between the power of compulsion and the force of revulsion. Besides, we discern in this psychic state not only the deterioration of the will mechanism, but also the phenomenon of dissociated consciousness appearing in its fully developed aspect: the real is non-existent, while the non-existent (the tragic past) is the only thing real.

The clear interpretation of the inner meaning of hysterical attacks, given by Dr. Morton Prince, finds in Professor McDougall's case, a strong vindication. Says Dr. Prince:

"In certain pathological conditions in which there is limitation of the field of consciousness (involving a disappearance of a large part of the normal mental life) often all that persists of consciousness and represents the personal self is the obsessing complex which previously tormented the patient. In hysterical crises, psycholeptic attacks, trance, and certain types of epilepsy this is peculiarly the case. In

[11] Professor McDougall. "Outline of Abnormal Psychology," p. 260.

these states the content of consciousness consists almost wholly, or at least largely, of a *recurrent memory* of an experience which originated in the normal life and which has been conserved in the unconscious. . . . In hysterical attacks, particularly, the complex is accompanied by the same strong emotional tone — such as fear, anxiety, jealousy, or anger — which belonged to the original experience." [12]

But the extreme manifestations of hysteria are of lesser importance to the criminologist than the general psychic constitution of hysterics which frequently drives these defectives into the ranks of the delinquent strata of society. In this connection, the learned opinion of such an experienced thinker as Dr. Régis might be cited:

" Their character," says this author, " is bizarre, capricious, queer and excessively mobile; sensibility is very live and out of proportion with actual happenings; perpetual and sudden changes in sentiment and affections, together with unreasonable enthusiasm; duplicity, lying, ability to simulate, cheat, invent and deceive, imposture (mythomania); strong and unfounded propensity towards most perverted and criminal acts, and equally, towards humane things, bravery and other most commendable manifestations." [13]

Most of these traits are either directly or indirectly caused by the derangement of the volitional mechanism, and the pathologic inability to control the emotional system.[14]

Owing to this condition, we find among hysterics many cases of pathologic lying, all kinds of simulations, murders by poisoning, and exhibitionism. It is interesting to note that hysterical acts not seldom evince a " mysterious " or romanesque character, and, accordingly, offenses committed by hysterics sometimes are accompanied by strange and inexplicable machinations on their part.

205. **Paranoia.** In *paranoia* we find further demonstration of the morbid effect of disintegrated will functions upon in-

[12] Dr. Morton Prince, " The Unconscious," pp. 280–281, Second Ed., New York, 1924. Italics ours.

[13] See Dr. Régis, " *Précis de Psychiatrie,*" p. 956, also pp. 1111–1112, Sixth Ed., Paris, 1923. Compare with Dr. Bumke's description of the hysterical character in his " *Lehrbuch der Geisteskrankheiten,*" p. 439, München, 1924.

[14] On the mental state in hysteria and its different conceptions, consult further Dr. Alexandre Lestchinski's " *Les États Nerveux et leurs Traitements,*" *avec préface du Dr. Claparède,* pp. 119–137, Geneva, 1926.

dividual conduct. In the earlier stages of the psychosis general restlessness, coupled with insomnia, is observed. As in the neurasthenic states, there is inability of concentrating attention and a corresponding decrease in working capacity. Still, the perceptive faculties are not yet impaired, since the grave delusions develop later, and then they begin to govern the patient's *modus agendi.*

This mental disease is well known to those dealing with court matters, inasmuch as it frequently assumes the forms of "litigious mania" (*paranoia querulans*) and graphomania. Innocent as these particular manifestations of psychopathism may seem, nevertheless, they lead sometimes to sinister consequences and are the cause of many false witness-testimonies and unfounded accusations.

Dr. Healy remarks:

"Legal action, on new and old claims, is continually sought with great expenditure of time and money and endeavor. Dr. Glueck, of the Government Hospital for the Insane, tells me that in his department are some individuals who in the course of years had lumbered the courts with hundreds of actions at law before they were officially declared *non compos mentis.*" [15]

A typical case of litigious monomania is recalled by the author (1912, St. Petersburg Supreme Court).

In order to give an idea as to how the paranoic mind actually works, we shall reproduce verbatim the dialogue which took place between a certain Gregory Mikhailov and the author whom Mikhailov came to see "on official business":

Distr. Atty: What can I do for you, Mr. Mikhailov?

Mikhailov: Did you receive the complaint which I sent through the office of the Justice of the Peace N?

Distr. Atty: I don't think so; but what was the nature of the complaint?

Mikhailov: I am accusing the judge of insulting me in the course of a trial, and I want you to investigate the charges set forth in my complaint. It is strange that you should not have received my affidavit.

Distr. Atty: When did you send it?

[15] *Op. Cit.*, p. 604.

Mikhailov: The day before yesterday.

Distr. Atty: Well, it might have been delayed in the mail.

Mikhailov: There seems always to be some delay when *I* am addressing my affidavits and complaints to the court. I am going to bring the matter to the attention of the Postmaster General.

Distr. Atty: It is your right, of course, but is it worth doing?

Mikhailov: You seem to be in sympathy with those who seek to attack my character and prevent me from being vindicated by the court.

Distr. Atty: Not in the least, you are obviously mistaken.

Mikhailov: Being a young man, you should not be talking to me in this way. I see, there is little hope for me in *your* office. I shall write at once to the Supreme Court requesting them to appoint another district attorney who might take greater interest in a matter that vitally affects *my* reputation and good name.

Having uttered these words, Mikhailov walked out of the office showing marked indignation. Shortly after this incident, the Court notified the district attorney that a voluminous complaint against him had been filed by Mikhailov.

The danger of such witnesses testifying in court is all the more obvious as paranoiac monomanes sometimes show no outward signs of mental derangement: they speak with dignity, their manners are well-balanced, while the general line of reasoning does not appear to be broken.[16]

The disease is often accompanied by delusions of persecution, and then the patient exhibits a tendency to concoct intricate and ingenious stories, describing alleged attempts against his life, and other imaginary events.

But the criminogenic tendencies developing as a result of paranoia, are by no means confined to perjuries and pathologic lying.

Lacassagne, discussing the anti-social effect of this psychosis, with good reason asserted:

"Insane murderers are frequently recruited from among this category. Anti-social acts of these defectives are sometimes committed

[16] On the subject of pathological accusation and lying, see Dr. William and Mary Tenney Healy's valuable book "Pathological Lying, Accusation and Swindling," Boston, 1922; Dr. Anton Delbruck, "*Die Pathologische Lüge und der psychisch abnorme Schwindler,* Stuttgart, 1891; and also Dr. August Forel's "*Mensonge ou Erreur chèz l'homme normal,*" Bruxelles, 1925.

with such coldbloodedness, that the psychiatric diagnosis is not easily accepted by the judges. . . . Finally, there is a group of paranoiacs affected by mystical ideas and megalomania; they believe themselves to be endowed with a mission to accomplish in this world; they are sent by God in order to retaliate on behalf of society, by liberating it from a tyrant; they then perpetrate the assault, having calmly planned their attempt." [17]

In every one of the modes of insanity to which, so far, reference has been made, we perceived either distinctly expressed or vague aberrations, whose origin was found to be psychogenetic. In this group, the mental derangements are largely dependent upon, or resulting from, disintegration or perversions of the volitional functions. The fact that hysteria, or paranoia, may be connected with some physiological defect, is of secondary importance to the criminologist, so long as he comprehends the psychic mechanism, producing specific reactions of an anti-social character.

Because we believe that crime is a *willful* attempt against the social order, it must be concluded that whenever the clinical picture demonstrates an all-embracing deterioration of the will-mechanism and a *total loss* of self-control, caused by this state of mental deficiency, the jurist is confronted with a condition precluding criminal responsibility.

In the mental diseases, accompanied by the derangement of volitional functions, the offender, as we saw, may understand the nature of the act which he is committing. He may, for instance, realize the fact that stealing is both intrinsically wrong and punishable under existing laws. In this way, it is quite possible for him to understand that the act of stealing is a criminal attempt against the social order to which he belongs and of which he is part. However, because of the constituent defect in his volitional mechanism, he is altogether incapable of resisting the morbid or egocentric impulse, and thus he goes and steals some thing. (Kleptomania.)

206. Lack of Cognition and Anti-social Conduct. But anti-social conduct may be devoid of the element of cognition, so that the individual undertaking the commission of a crime

[17] *Lacassagne et Martin, "Précis de Médecine Légale,"* p. 144, Paris, 1921.

knows not what he is doing, or at least fails to grasp the significance and ultimate effect of his deed.

It will be recalled that according to the author's conception of crime, the act must be a prohibited and punishable deed, constituting a willful attempt *against the social order*. This means that in perpetrating an offense, the actor must be aware of: *a*. what the social order is, *b*. the relation between the act which he is about to commit and the social order, and *c*. the penal effect of the transgression.

Now, there are many modes of insanity in which these elements of cognition are non-existent. The defective has no comprehension of the complex phenomenon known as the "social order." The idea itself of the state, with its penal code, the administration of criminal justice, punishment, and other means of legal coercion, does not enter into his mental operations. He knows them not. His psychology resembles that of Chekhov's Grisha (Chapter V), who takes the orange from the counter because he wants to have it, and his infantile mind is not familiar with the "conventions" of the social order.

An offense, committed in such a frame of mind, certainly does not possess those proprieties which, in our judgment, are requisite to the conception of crime.

We shall now allude to those forms of insanity which have the quantitative defect of the mind for their foundation. In the course of the discussion the criminogenic nature of these mental derangements will be borne out.

207. Dementia Senile. First, let us analyze the simple psychopathic state, dementia senile. It is a typical disease of old age, rarely observed among people under sixty. While the origin of the defect, involving chronic cortical atrophy, may be due to a number of diverse causes, its mental symptoms are well-defined and present a uniform clinical picture. Professor W. H. B. Stoddart, of London, speaking of this form of dementia, states as follows:

"As the disease progresses *imperception* occurs and is demonstrated by the patient's failure to distinguish between blues and greens and by his inability to take in the meaning of simple sentences or of

pictures. Later he becomes unable to recognize objects or at least to give them a name. He is disorientated in time and place, does not know where he is, has no idea of his age and is unable to say what year it is. In typical cases hallucinations do not occur. There is *poverty of ideation* and lack of coherence in the train of thought, any chance percept being sufficient to divert the patient's purely instinctive attention; voluntary attention is practically obliterated. . . . The cortical perception centers are incapable of retaining new impressions and the patient lives in the past. He forgets where he places things and perhaps accuses others of having stolen them. . . .
The conduct is characterized by *restlessness without energy* and undue tendency to fatigue. There is progressive loss of control of the emotions and instincts. These patients may laugh, weep or show irritability on very slight provocation." [18]

It will be easily understood that, such being the general condition of the mind, the patient suffering from dementia senile in its fully developed form is wholly incapable of performing any mental operation of a logical order. If it were possible to present graphically the trains of thought of such a defective, they would be found composed of fragmentary perceptions and disconnected ideas, without beginning or end, utterly incapable of being brought together or organized into definite conceptions, and absolutely devoid of either systematic induction or orderly deduction.

In Stoddart's work, "Mind and its Disorders" (p. 330), there is a photographic reproduction of a portion of a letter written by a patient suffering from dementia precox. The picture shows a series of meaningless marks, dots, and illegible characters. This exhibit of pseudographia is descriptive of the ideational content of a mind affected by dementia senile.

208. Dementia Senile and its Relation to Crime. Fortunately, because of the loss of energy and failure of all volitional functions, these lunatics are rarely capable of committing grave crimes, which, as a rule, necessitate planning, careful deliberation, and concentration of both thought and will. Petty offences, however, like pilfering, indecent behavior, exhibitionism, and so forth, are not uncommon among this class of insane people.

[18] "Mind and its Disorders," pp. 474–475, Fifth Ed., Philadelphia, 1926.

The fact must be emphasized that dementia senile, being a psychic disease, characteristic only of advanced age, the patient, in the past, may have been endowed with mental vigor and normal reasoning faculties. Therefore, in the earlier stages of the deficiency he may still retain a number of precise notions and, consequently, may comprehend the meaning of the social order. According to the prevailing doctrine of criminal responsibility (see Chapter VIII), he might be, during this transitional period of the psychosis, treated as only partially insane, and probably punished accordingly.

209. Feeblemindedness (Imbecility, Cretinism, Idiocy). The quantitative defect of the mind may be due to many different psycho-physical causes. It is, therefore, quite legitimate and necessary for neurology and psycho-pathology to examine separately every individual form of feeblemindedness, seeking to determine its underlying physiological antecedent. Criminology, on the contrary, is primarily interested in the synthetic results of insanity and its relation to anti-social conduct. In this sense, the criminologist may be justified in discussing the phenomenon of imbecility alongside of dementia senile. Likewise, from the standpoint of the aetiology of crime, all the ramifications of weakmindedness, such as idiocy, semi-idiocy, cretinism, moral imbecility, and so forth, can very well be grouped into one class, irrespective of the physiological symptoms appearing in the particular variety. Whether due to morbid heredity; or toxic effects upon the spermatozoa; or traumatic injuries suffered by the brain during the process of birth, — the psychic content of the imbecile mind invariably evinces lack of perception and ideation, and an almost complete inability of forming abstract conceptions. With this come other marks of deficiency, such as imperfect articulation, poor vocabulary, impaired auditory faculty, and the like. Thus, normal mental equipment is either altogether absent, or is hampered in its development, so that an idiot at the age of thirty shows a mentality of a child under seven. In other words, it is not *dementia,* but *amentia.*

210. Criminality Among the Feebleminded. Because of these properties of the idiotic mind, it is to be expected that

no conception of the social order and its precepts can possibly be evolved by consciousness, and, consequently, the behavior of the imbecile is primarily, if not exclusively, governed by purely zoölogical impulses, imitation and blind sub-instincts, which are not only underdeveloped, but frequently perverted. Here, then, it is not *maladjustment,* but *non-adjustment* to organized life. The idiot mechanically registers in his mind the simple environmental events, but he fails to grasp their causative correlation, being incapable of putting two and two together. Among prison inmates there are many who justly belong to insane asylums. Referring to this subject, Dr. Hollander states:

"In Parkhurst Prison, among a daily average of over 750 convicts, 'the number classified as weak-minded at the end of the year was 117, but in addition 34 other convicts were attached to parties of weak-minded for further mental observation.' And 'during the year 35 convicts were certified as insane and sent to asylums.' If a person is so defective that he cannot earn his living, he will take more readily an immoral course, probably to robbery. The mental defect may not be very apparent while he is sheltered in his home. It may manifest itself only when he has to provide for himself and face the difficulties that meet him in the world. As a rule, work is drudgery to him, for he cannot learn. He may succeed for a long time before he is caught, for often he is cunning, though weak-minded. Cunningness is not a sign of intelligence. Even idiots can be very cunning. As a rule, however, the mental defect that is taken note of is of a more marked type, and amounts to actual mental weakness. To this class belong the foolish odds and ends of humanity, the people of no foresight. Some are given to trivial offenses often repeated: for example, the theft of certain articles only. Others commit a number of apparently purposeless offenses. Mentally defective girls become easy victims to sexual immorality."[19]

In the Government Asylum near St. Petersburg (Oudelnaya) the author witnessed many sexual perversions among idiotic patients, especially women (masturbation, morbid interest in everything pertaining to sex, exhibitionism, etc.). In one instance, a woman of forty, prior to her detention, was caught

[19] Bernard Hollander, "The Psychology of Misconduct, Vice and Crime," pp. 41, 42, London, 1924.

at the moment when she assaulted a little girl of eight or nine. On the other hand, it is commonly admitted that with idiocy and imbecility many other morbid sexual manifestations are connected, among which may be noted — bestiality (sexual intercourse with animals), necrophalia,[20] and homosexualism.

211. **Dementia Precox.** In dementia senile and idiocy, as we saw, the defect of the mind is quantitative, *par excellence*: in most cases it is easily diagnosed, and its physical characteristics begin to be noticeable, either from the very birth of the unfortunate infant (mongolism) or shortly thereafter (cretinism). But psychiatry is cognizant of many other modes of insanity, in which the mental disease is mainly a *functional* derangement of the reasoning apparatus. In this class, too, the psycho-pathological condition may be dependent upon some constituent physiological or bio-chemical anomaly, but the mental equipment is not absent, only its operations are disintegrated, the process of ideation assuming incongruous forms and bizarre manifestations. The various mental diseases usually included in the dementia precox or schizophrenic group properly belong to the functional psychoses.

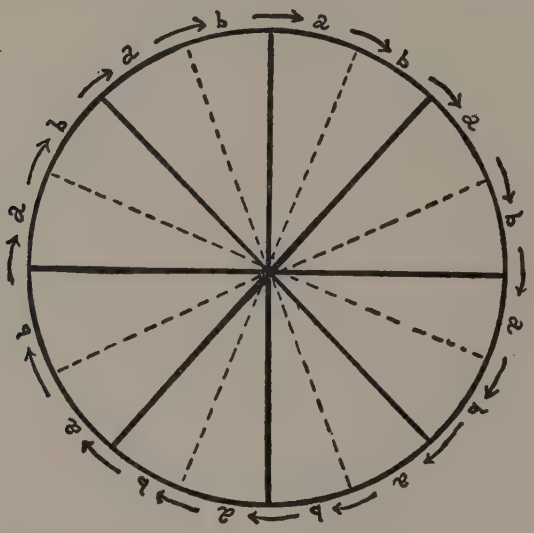
As the term itself indicates, dementia precox appears either in adolescence or at a comparatively early period of life. It seems to be a generally accepted notion that in most cases the origin of this variety of psychopathism is hereditary. Attempts have even been made to apply the Mendelian law to the genesis of this mental disease.

212. **Mental Processes in Dementia Precox.** However, in this phase of the mental derangement we are not interested. The important symptom of this particular form of insanity is the almost complete dissociation of consciousness, assuming a rather peculiar orientation: Here, as it were, two trains or trends of thought, mutually precluding each other, run in a parallel manner and co-exist without interfering with each other. It is not like in somnambulism, where two substantially different psychic states appear in consciousness alternatively, so that when one state is present the other is non-existent, and vice-versa.

[20] See Krafft-Ebing, *Op. Cit.*, p. 611.

213. Nature of Dissociated Consciousness in Dementia Precox. In dementia precox, on the contrary, two trends of thought develop simultaneously, producing in the diseased mind two innerly, not affiliated, mental pictures. Listening to the incoherent conversation of a person affected by this derangement, one is usually impressed by the fact that the patient, in his mental operations, jumps from one subject to another, without ever arriving at any definite conclusion. In the final analysis, however, in his speech the same specific and persistent themes can be discerned, which continuously and rather monotonously reappear in the ideational content, so that the verbal flow becomes locked into a vicious circle. The thought assumes a peripheral motion without reaching and being reached by the centers of integrative reasoning.

In such verbal utterances, we find that the subject matter is usually composed of only two elements, *a* and *b*. In spite of their mobility, their mutual relative position remains intact. Graphically, this condition may be expressed as follows:



As shown above, *a* and *b* appear in one and the same field of consciousness, whose cleavage is denoted by the dotted line. The continuous motion of the two co-existing elements is, thus, absolutely resultless.

Dr. Healy, in his case 115, reports verbatim the conversation of a young delinquent (vagrancy, disorderly conduct, petty larceny), suffering from dementia precox. Taking at random one of the passages from this incoherent but protracted talk, we find the subject content confined to *two* main themes: I. *ill-health* and II. *bad habits*. Careful analysis discloses the typical presence of the ideational vicious circle:

"I've been felling no good for half a year straight. —— I.

Well, now some more confessions. I never smoked, or chewed in my whole life. Smell my breath. —— II.

I ain't the right kind. —— I.

Lots of fellows on the outside smoke and chew. I can tell a fellow that does by his breath. I don't drink any beer. There's lots of fellows that drink beer, but I don't. —— II.

I can get good and plenty without it. I mean I eat only health food, but I ain't strong the way I should be. —— I.

I tell you what a man I'm trying to make of myself, if I grow up to be 50 or 60 years old what kind of a man will I be? Lots *of these old men used to be boys once,* and they are lawyers and doctors and so on. —— II. (Bad Habits Inferred)

I ain't got the chance because I ain't fit. —— I.

A boy told me once about them bad houses. I asked where was the houses. He took me. We didn't go in. We got caught — he was throwing potatoes — just possibly for fun —— II.

They asked us if this was the place where you get work, and *good health,* and make a man for yourself. —— I. (Ill-health inferred)

My partner that time he was going to pay 50 cents for me to go and stay with a woman, and I said no —— II.

I don't go to shows. Used to. My father refuses now to give me money. He says there must be some reason I stick to the rotten bunch. *I must get out in the country, in the fresh air.* —— I. (Ill-health inferred)

They always come over and ask me to go there and there with them." —— II. (Bad Habits inferred).[21]

[21] *Op. Cit.*, p. 599. This mental condition should not be confused with dissociated consciousness, as it appears in different exhaustion and infection psy-

214. Negativism in Dementia Precox. Among other characteristic modes of dementia precox, strong *negativism* must be mentioned. It is that peculiar frame of mind which signifies the persistent endeavor of the patient to retire from the realities

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choses, typhoid fever, delirium tremens, etc. In this heterogeneous group we encounter extremely interesting forms of delirious states and hallucinations, where the fields of consciousness are also completely torn apart; furthermore, here, too, as in dementia precox, they co-exist, simultaneously pressing upon the diseased mind. Nevertheless, the parallel operation of the two trains of thought *does* produce qualitative changes, the nature of which sometimes is quite intricate. When the origin of the delirium is due to a complex (mental wound) which had been kept repressed, the painful event suddenly and with great vigor invades the mind, which strangely combines the element of *repression* and the attempt of its *expression,* producing the phenomenon of mental duplicity. Such is the psychosis of Ivan Karamazov, the "intellectual murderer" of his father, when, owing to his crime and the terrible inner conflict arising therefrom, he becomes affected by mental prostration which finally develops into delirium tremens. In the famous chapter, entitled "Devil. The Nightmare of Ivan Fedorovich," Dostoievsky pictures his hero when he is on the verge of a complete breakdown. He is seized by fever, but conscience continues to torment his mind: he is still endeavoring to control the complex; he is still struggling against himself. But, as Hart justly says, "Although the repressed complex is . . . deprived of its normal mode of expression, it does not thereby cease to exist." In the case of Ivan the devious path along which the banished ghost finds its way back to consciousness, assumes the form of a dreadful hallucination. Ivan imagines himself in company with the devil whom he hates. He revolts against his intrusion; but the devil refuses to leave him, and then this dialogue takes place:

"Not for a minute do I accept you as a real truth, shouted Ivan, as though in fury. — You are my disease, you are a phantom. Only I don't know how to smash you, and I see that I shall have to suffer for a while. You are my hallucination. You are the incarnation of myself; however, only of one part of me . . . of my thoughts and feelings, — but the most wicked and stupid. From this standpoint you could even interest me, had I only time to bother with you. . . .

— But wait, wait I shall bear evidence against you; lately, at the lamppost, when you flew in anger against Alesha and screamed at him; 'you found it out from *him.* How did you learn that *he* visits me?' Now, then, it was me whom you had in mind. Consequently, you did believe, even though for a trifling little second, you did believe that I actually exist, — mirthfully uttered the gentleman.

— Yes, that was nature's weakness. . . . Still I could not believe. I don't know whether I was sleeping or walking that time. Perhaps then I saw you only in my dreams, and not at all in reality.

— If so, why were you so unkind, I mean — to Alesha? He's nice. . . .

— Shut up about Alesha! How dare you, lackey! — again laughed Ivan."

In this hallucination the field of consciousness, although exhibiting a fatal cleavage, sets two trains of thought in motion which develop in accordance with the laws of normal logic, and thus the ideational content is in a state of continuous qualitative change. Here, then, there is no vicious circle, in spite of the fact that the pathological condition of the mind is obvious.

of life. Dr. Bleuler, describing the phenomenon of schizophrenic negativism suggests the following symptoms:

a. The autistic retirement of the patient into his own phantasies.

b. The existence of a life-wound (complex) which must be protected from injury.

c. The misconception of the environment and of its meaning.

d. The directly hostile relation to environment.

e. The pathological irritability of schizophrenics.

f. The "press of ideas," and other aggravations of action and thought.

g. Sexuality with its ambivalency on the emotional plane is often one of the roots of negative reaction.[22]

215. Suggestibility. All these characteristics, combined, aggravated by the condition of suggestibility,[23] to a large extent, predetermine the general character of the patient's social conduct.

Much in the same way as hysterics, the precox defectives, especially in the earlier stages of their disease, are irritable and manifestly egocentric.

They are opposed to the social order, not because of any specific fault they find connected therewith, but owing to their basic negative attitude towards the real world *in toto*.

[22] See C. G. Jung, *Op. Cit.*, pp. 202–203. On the subject of negativism, see also Jelliffe and White, *Op. Cit.*, pp. 976–977, Stoddart's "Mind and its Disorders," pp. 323–325.

[23] It is interesting to note that while in dementia precox suggestibility is very pronounced, nevertheless it is not as conspicuous as in other psychic diseases. Dr. J. Rogues de Fursac, who made a comprehensive survey on this subject, gives the following ratios for the different mental derangements:

	Average of suggestibility (maximum — 6)	*For every 100 subjects having ceded to suggestion*
Feeblemindedness	2.66	75
Epilepsy	1.70	50
General paralysis	1.20	30
Dementia Senile and Cerebral arteriosclerosis	1.20	60
Dementia Precox	0.40	20
Manias	0.30	33
Melancholy	0.00	00
Chronic hallucination psychosis	0.00	00
General Average	0.93	33

(See No. 5, *Annales de Médecine Légale*, p. 197, May 1926.)

An anarchist of the type of Lucheni attacks the state and perpetrates crimes, on the one hand, in consequence of his egocentric disposition (envy, vengeance, vanity, etc.), but equally as a result of his political convictions. On his part there is no negativism with regard to life, *an und für sich:* on the contrary, he is eager to partake of its pleasures and plenty. Thus, in the anarchist's rebellion against the social order there is *always* a strong egoistic and aggressive under-current. But the precox insane tries to withdraw from life: he dislikes intensely the real things as they come in every-day actuality, and even in his aggressiveness he invariably maintains the attitude of negativism.

Moreover, the disintegration of his volitional functions prevents him from undertaking the commission of elaborate crimes. Dr. Healy justly observes that among habitual adolescent offenders the number of those affected by dementia precox is not as great as some writers are inclined to think. He says:

"In going over our own records we find it impossible to be exact in this matter on account of the slow evolution of the disease. Indeed in the cases which we have sent to hospitals for the insane we frequently cannot get exact diagnosis. . . . But certainly in not more than 25 cases in our 1,000 young repeated offenders have the symptoms been interpretable as belonging in any way to dementia precox, and very likely a number of these will prove to be cases of other diseases." [24]

It should be remembered, however, that the precox delinquent is conspicuously inclined towards sexual abuses, while it is not uncommon to find him among the so-called vagrant criminals and all sorts of petty offenders.

The psychic constitution of schizophrenics in many respects resembling that of hysterics, it is natural that both classes of the insane are potential criminals, while the anti-social acts which they perpetrate are being committed without comprehending their wrongful nature.

216. **Dementia Precox, Delusions and Morbid Impulsiveness.** On the other hand, dementia precox may generate in the deficient mind different delusions which are particularly dan-

[24] See Dr. Healy's *Op. Cit.*, p. 594.

gerous when the sexual element is found present. On this subject Dr. Hollander explains:

"Delusions referring to the sexual functions are not uncommon. Consequently jealousy and suspicion of infidelity, of the husband by the wife and the wife by the husband, frequently occur, and may end in murderous assaults."

In special literature emphasis was often laid upon that symptom of dementia precox which is described as the destruction, or, rather, the derangement of the volitional functions. There is a difference, of course, between the complete disintegration of the will-mechanism and its disorganization which may take the form of morbid impulsiveness, when the individual is unable to coördinate his actions, and proceeds to undertake the commission of some anti-social deed, driven by an almost inexplicable propension, the significance of which he can hardly understand and certainly is incapable of keeping under his control.

The criminogenic effect of such discoördinated conduct, frequently encountered both in dementia precox and manic depressive insanity, does not require further explanation.

When a sudden crisis of this kind takes place, we find a fully developed state of dissociated consciousness. Its field is split into two regions, one of which is turned towards the real, retaining a more or less normal correlation with the actual world, whereas the other is introverted, and its connection with reality, whether physical or psychic, is severed.

In criminal practice the would-be motiveless offenses are well known. Oftentimes, they are exceedingly difficult of detection, since it is the motive of the crime that ordinarily furnishes the key to its solution. In those cases, where the offender is finally detected, his act, as a rule, is found to be the outward manifestation of mental deficiency, and more particularly of schizophrenic origin.

217. **Homicidal Impulsiveness in Dementia Precox.** Dr. Sullivan reports several most instructive instances of homicidal impulsiveness, claimed to have been generated by dementia

[25] Bernard Hollander, *Op. Cit.*, p. 60.

precox. The story of one of these cases is so typical that it seems useful to allude to it here *in extenso:*

"*Obs.* 24. E. W. aged 17, indoor servant. Murdered a boy whom he had never seen prior to the crime. Patient had a family history of insanity on both sides, two paternal great-uncles and a maternal grand-aunt and her two daughters having been under asylum care, with symptoms described as 'mania' and 'melancholia,' followed by dementia. Patient himself was noted in childhood and during his school years as shy and reserved in manner, solitary in habits, and frequently absentminded. He suffered from bed-wetting till about 9 years of age. At school he showed average intelligence, reaching the 7th Standard, and he was found quite efficient in the household where he was employed for eighteen months before the murder, and where he enjoyed the reputation of being 'exceptionally good in morals.' The circumstances of the murder were these: The patient, who was alone in the house, telephoned for a district messenger, and, on the arrival of the boy, hit him on the head with an iron bar, dragged the body by a rope around the neck to an inner room, and left it there, having turned a gas radiator full on and closed the windows and door. He then left the house, took the train to a country village, and there accosted a policeman, saying, 'I think I've done a murder,' and giving particulars of the place, time and manner of the crime. He also said, 'I've felt bad since I lost my mother last January; I don't know what made me do it.'"[26]

In this case, then, the whole picture of the crime exhibits a series of motiveless acts of an impulsive nature, coercing the individual to undertake the commission of a crime, whose psychogenetic nature he cannot comprehend.

Likewise, diverse manifestations of anti-social behavior are caused by hallucinations, which not seldom accompany schizophrenic insanity in its paranoid ramification.[27]

In summing up our remarks on the effect of dementia precox, it might be said that, while there is no reason for asserting that

[26] Sullivan, *Op. Cit.*, pp. 115–116. A similar case of impulsive murder is described by Dr. Henry Maudsley. See, *Op. Cit.*, pp. 157–159.

[27] We shall not attempt to draw a line of distinction between dementia precox and paranoia, for the simple reason that Kraepelin, in his "*Lehrbuch der Psychiatrie,*" established the fact that paranoiac phenomena are closely affiliated with schizophrenic deterioration. In this way, at present, the conviction seems to prevail that paranoia must be included in the dementia precox group.

dementia precox necessarily leads to crime, nevertheless, the very nature of the disease conveys to the person suffering therefrom a distinctly anti-social temperament.

From the standpoint of criminal responsibility, it is important to bear in mind that the schizophrenic usually does not conceive the anti-social significance of his acts, since the deteriorated mind fails to grasp the meaning of the social order itself. It is imperception, or lack of cognition, resulting from the pathological disorganization of the reasoning apparatus.

On the other hand, and this is the other variety of the psychosis, a precox may be acting under the influence of morbid impulsiveness. Even though elementary cognition is not absent, — consciousness is dissociated, and the will-mechanism escapes the control of coördinated reasoning.

Epilepsy

218. Epilepsy. Epilepsy, in its diverse forms, occupies a prominent place in neurology. Comprehensive studies have been devoted to the investigation of this obscure disease, whose underlying causes, to a large extent, still remain undetermined.

The outward symptoms of epilepsy, including the act of falling and convulsions, is by no means confined to this psychosis alone. In Professor Stoddart's formulation:

> "'Epilepsy is a disease characterized by occasional, sudden, excessive, rapid local discharges of the cortical gray matter'; but the name should not be applied to patients suffering from the convulsions of alcoholism, plumbism, uraemia, gross brain lesions or general paralysis." [28]

Convulsion attacks or seizures, as pointed out in an earlier part of this chapter, are also observed in hysteria, as well as dementia precox, cerebral syphilis and many other neural derangements. Sometimes, indeed, it is extremely difficult to draw a line of demarcation between the different epileptic and psycholeptic states, on the one hand, and, on the other hand, a great variety of mental diseases, whose origin is probably due to causes alien to the aetiology of genuine epilepsy.

[28] *Op. Cit.*, p. 349.

In connection with this group of lunaticism, criminology has to take notice of three important subjects:

a. The egocentric nature of epilepsy;
b. Its sexual character; and
c. The difficulties of determining the degree of imperception in the various states and stages of the mental deficiency.

219. Epilepsy and Egocentricism. The egocentric propensity is deeply rooted in the biological nature of the human animal. It enters distinctly into our fundamental desires, and finds its further expression in sub-instincts, instincts and a series of temperamental dispositions. In normal conditions, however, egocentricism is counterbalanced by a whole range of social tendencies, altruistic considerations and the sum total of our moral convictions.

Even though, at times, the controversy between the egoistic impulse and the precepts of the social order may, psychologically, result in a strong inner conflict, nevertheless, as a rule, a normally developed individual manages to overcome the crisis, without coming in collision with the organized community, of which he is part. In this sense, as remarked before, there is a state of harmony between the social entity and its component parts, so that, in ordinary circumstances, individual conduct moulds itself in compliance with the regulative functions of law and order.

Now, in many forms of insanity, and more particularly in epilepsy, the egocentric tendency assumes uncontrollable proportions. The epileptic, in his mental life, converts his *ego* into a sort of microcosm which he imagines to be a macrocosm, beyond which he thinks there is nothing worth while, nothing that would require sacrifice on his part, or even ceding a particle of his rights, whether fictitious or real.

Jelliffe and White, enumerating the different symptoms of classical epilepsy, state:

" The classical epileptic is apt to be morose, irritable, suspicious, and hypochondriacal. He is quite characteristically unreliable and with it all frequently presents a very aggressive form of sentimental, shal-

low religiosity. This type of epileptic, in general then, is very sensitive, irritable and insincere. He is egocentric to a very considerable degree, paying great attention to himself, his own feelings, his state of health, his physical comforts, and his immediate surroundings. . . . His interests all tend to be concentrated in this egocentric constellation." [29]

This "egocentric constellation," then, together with the disintegration of the will-centers, account for the criminogenic disposition of these psychopaths.

In the introductory chapter to this study the attempt was made to demonstrate that egocentricism is the psychic factor which is at the bottom of the criminal intent; the *animus* of every anti-social act is organically tied to the principle of unrestricted egoism. In the insane mind this factor, becoming a constituent part of the morbid ideation, impels the patient to shape his whole behavior along distinctly anti-social lines, with the result that he is continuously at wrong with the social order whose outcast member he believes himself to be. The condition becomes all the more dramatic when consciousness is infected by the sexual element which, normally, belongs to and is kept in the subconscious realm.

220. Epilepsy and the Sexual Undercurrent. The affiliation between epilepsy and perverted sexualism is a firmly established fact in psychiatry. The mode in which this peculiar affinity may manifest itself is merely a matter of fact. The epileptics furnish a wide variety of sexually perverted types,

[29] *Op. Cit.*, p. 954. Compare this description with that of Dr. E. v. Hofmann, *Op. Cit.*, p. 840. This writer, perhaps not without reason, adds to the characteristics of epileptic constitution: (a) the suicidal impulse and (b) moral perversion, assuming sometimes the form of "moral insanity" or imbecility. We are not quite sure that among the mentally diseased there actually can be traced an *independent* class which can be catalogued under the term "moral insanity." It is undeniable, of course, that in various groups of mental defectives, especially among idiots, moral conceptions are altogether absent. In such cases, however, the symptom of moral imbecility forms part of the more general deterioration of the mind, and is usually caused by some distinct physiological defect in the cortex and the central nervous system. On the other hand, moral insensibility may be observed among mentally normal individuals, such as Leopold, Loeb, Guilevich, etc. Here, the criminalist encounters pronounced symptoms of egocentricity due to morbid environmental influences and perverted education.

ranging from mere exhibitionism to the menacing phenomenon masochism.

The Freudian school seeks to explain epileptic fits, in idiopathic or genuine modalities, by the fact that the act of falling is said to be accompanied by the gratification of the sexual desire. Dr. Kempf, for instance, asserts:

"The fall, in a proper affective setting in the dream and the psychosis, signifies sexual submission, and the convulsion, if it then occurs, seems to be the orgasm and is as genuine as if it occurred as the result of adequate irritations of the primary erogenous zone." [30]

While some writers, as Professor McDougall, seem to be very cautious on this point, it is likely that in many cases of genuine epilepsy (as well as fully developed hysteria), the sexual theme plays a rather important role in the development of the mental deficiency itself, by accelerating its structuralization and intensifying its outward symptoms. Although this process may not necessarily and in its totality be generated by repressed sexual urges, nevertheless, in the patient's history there is likelihood of unearthing some episode tending to explain the phenomenon of sexual abuses (masturbation in public, exhibitionism, and so forth) frequently accompanying the paroxysmal stages of epilepsy.

If the Freudian theory be correct, it would seem that the repressed desire overpowers all considerations and barriers of the socionomic order, and, finding no resistance on the part of volition, swings to the foreground and takes the form of an anti-social discharge (rapes of the underaged, homosexualism, both among men and women, etc.).

The sexual substrata thus observed in epilepsy among other prominent writers, has been also emphasized by Dostoievsky, both in his "Idiot" and "Brothers Karamazov." Furthermore, in special literature, the claim was made that in pyromania and kleptomania, which are undeniably of epileptic origin, the sexual symptom is also present. In other words, both the criminologist and the psychiatrist, when they are confronted with a crime committed by an epileptic, should al-

[30] *Op. Cit.*, p. 672.

ways bear in mind that at the bottom of the criminal intent there may be a perversion of the sexual mechanism, and that this particular anomaly is partly responsible for the act itself.

221. Degrees of Imperception in Epilepsy. There is one phase attached to epilepsy which is of great importance to criminology. It can be formulated thus: While in dementia senile, idiocy, schizophrenia and similar mental diseases, the outward symptoms of psychic derangement are, more or less, obvious, epileptics often do not evince any external signs of their deficiency, and in some cases achieve marked prominence in various fields of human endeavor. Julius Caesar, Peter the Great, Napoleon, Dostoievsky and Mohammed were epileptics, and in spite of this their mental ability was unusual.

Now, it is not at all uncommon for a person to have committed a crime, without having previously shown any noticeable marks of mental derangement. The offender has been looked upon as a normal individual; moreover, the psychic disturbance may remain undetected forever.

Of course, in a case of genuine epilepsy, with frequent recurrences of *grand mal* or *petit mal* attacks, the diagnosis should not present unusual difficulty, especially when accompanied or followed by the state of epileptic furor. But in its latent varieties the disease sometimes is concealed not only from the casual observer, but even from the patient himself.

In chronic forms, mental deterioration gradually becomes more and more apparent, so that an epileptic brain easily degenerates into a constituent condition of either dementia or amentia. Still, before this state is actually reached, the patient may be reasoning, relatively speaking, normally and behaving without attracting attention on the part of his associates.

Such traits as egocentricism, auto-eroticism or narcissism usually remain unobserved, even though they may be prominent symptoms of the epileptic character. People with no special training, when they happen to notice such mental characteristics, are inclined to think that the individual is merely "queer," without giving further thought to the underlying significance of these or similar symptoms.

222. **Epileptic Equivalents.** There is a further difficulty connected with the diagnosis of the disease: Epilepsy does not always, or necessarily, take the form of convulsive attacks or fits. The paroxysm may express itself in the form of *mental disturbance* resulting in a complete dissociation of consciousness. This is so called *psychic epilepsy,* which is the equivalent of genuine epilepsy with its convulsive seizures.

Jelliffe and White, in this connection, observe:

"An attack of mental disturbance may take place of the convulsion and thus become an *epileptic equivalent.* These attacks of *psychic epilepsy* frequently take the form of so called *epileptic automatism* or *epileptic dream states.* In these conditions the patient may do almost anything and when he comes to himself he has absolutely no recollection of what has happened. Usually the attacks are of short duration and the acts rather simple — more simple than in the dream states of alcohol or hysteria. However, they may last for days, all sorts of things may be done, crimes may even be committed, so that the condition often becomes of great medico-legal importance. The crimes of violence are often noted for their ferocity and brutality." [31]

It will be easily conceived that in similar circumstances it actually becomes a grave problem to find the border line separating the normal functions of the epileptic mind from those occurring in the obscure field of insane phenomena. This being so, the question of legal imputation may some time present extraordinary difficulty.

Moreover, when coincident symptoms, such as egocentricism, are mentioned, the jurist should remember that those are by no means exclusive traits of the epileptic character; further, that automatism, narcissism (especially among women), ill-humors, "shallow religiosity" and many other characteristics of the same kind, are frequently observed in persons who are neither epileptics nor mentally deficient in general.

Cautious students do not hesitate to express their distrust in generalizations regarding both the part played by epilepsy in the volume of criminality, and the alleged ease of diagnosing specifically epileptic states. Thus, Professor M. Hamblin Smith, of Birmingham, reports his observations on the matter in question in the following terms:

[31] *Op. Cit.,* p. 957.

"The connection between epilepsy and delinquency has long been noted. Lombroso's view was that the criminal is, essentially, an epileptic. This view is no longer maintained. But, although it may not be acceptable literally, there is no doubt that it is very tempting. For features which characterize the epileptic are found in many delinquents. We have, in both cases, the outbreaks of ill-temper and violence, without any apparent provocation, the peculiar variations in temperament, and the fact that these characteristics present a certain periodicity. To these may be added the egocentric nature of both classes, their lack of emotional control, and even their marked tendency to religiosity. Yet, there are difficulties which must be duly weighed. Epilepsy is stated to be about as common among women as among men. And yet, in the author's experience, epileptic attacks are comparatively uncommon among female offenders, although it is only fair to say that this experience has chiefly lain among male offenders. Although he has no precise figures, the author has a distinct impression that epilepsy is decidedly less common in prisons now than was the case twenty years ago. Perhaps this decrease, if real, may be due to more careful segregation of the marked cases. Among Healy's series of 1,000 consecutive cases there were, including both definite and doubtful cases, 8.5 per cent of epileptics." [32]

Another experienced thinker says:

"In estimating the importance of epilepsy in relation to crime, it is necessary to take due account of the special circumstances which tend to give an exaggerated prominence to this disease in medico-legal practice. It is a disease, which is familiar to the general public by repute, and very frequently by actual observation; its occasional association with acts of motiveless violence is a matter of common knowledge; the possibility of its manifestation in attacks which are infrequent in their occurrence and ill-defined and anomalous in their character, is notorious. Add to this the dramatic features of the epileptic fit, which in the past have invested the malady with a mystical interest, as a sign of divine influence or demonic possession, and it is easy to understand how useful may be a suggestion of epileptic automatism in a case of murder where the defense of insanity would be otherwise somewhat feeble." [33]

Here, then, we are confronted with a disease, which is preeminently a psychic disease whose constituent characteristics,

[32] D. M. Hamblin Smith, "The Psychology of the Criminal," pp. 143–144, New York, 1923.

[33] Dr. Sullivan, *Op. Cit.*, p. 131.

however, in all too many cases, are indeterminate, and with its external symptoms varying greatly. On the other hand, the genesis of this particular form of insanity, being still a riddle awaiting its solution — but not yet solved, the fact will probably be recognized that no hasty conclusions can be drawn with regard to the nature of many transgressions which are usually grouped under the general caption of epileptic acts.

223. Psychic States in Epilepsy. In the science of psychopathology and in the practice of criminal courts the fact has been often emphasized that in epilepsy, perhaps more than in any other mental disease, it becomes necessary to distinguish between the variable psychic states. Unlike dementia senile or imbecility, the condition of the epileptic mind does not present a homogeneous picture with a static quantitative defect. In epilepsy the degree of the disintegration of consciousness is largely a matter of the *particular* psychic phase, so that in the conduct of the patient long periods may be registered during which there is practically very little deviation from normalcy.

On the other hand, in the *grand mal,* as well as in its equivalents, the functions of mental integration are completely disorganized and the cognitive faculty temporarily paralyzed. In the *petit mal* consciousness seems to be only partly obliterated, although there may be some doubt regarding the true psychological meaning of this epileptic state.

In the classical form of the disease, the jurist should perceive the difference between the following principal pathological conditions:

a. The general epileptic background;

b. The preparoxysmal stage, during which the patient becomes unduly irritable and suspicious;

c. The prodromal pause, usually accompanied by a warning, whether psychic-motor or sensory, of the approaching seizure;

d. The convulsive fit itself; and

e. The states of post-epileptic automatism.

Again, on the psychic significance of the prodromal stage, and especially the aura itself, in psychiatry, there is considerable diversion of opinion. Still those who, themselves, like

Dostoievsky, have experienced epileptic attacks lay stress upon the fact that there are during this period, which is of very short duration, just a few moments of complete recovery of consciousness, when all mental faculties instantaneously become intensified, and, as it were, focused in the lucid prism of consciousness.

For the practical aims of criminal justice, the differentiation of these various psychic states is of considerable import, inasmuch as in most countries the doctrine of partial insanity and partial responsibility is still prevalent (see Chapter VIII), and upon its continued existence the several theories of legal imputation are dependent.

Much in the same way with respect to epileptic equivalents attempts are made to draw lines of demarcation between the changing symptoms, accompanying the development of the mental disturbances. Stoddart sets forth the following classification expressive of the degrees of mental disintegration, in their ascending order:

a. Epileptic depression, or ill humor;
b. Epileptic excitement;
c. Epileptic confusion;
d. Epileptic delirium;
e. Epileptic stupor (so called epileptic catatonia);
f. Epileptic automatism, or "double consciousness." [34]

In all these psychic states, with the exception, perhaps, of that mentioned in Class *a.* the perceptive faculties of the patient are greatly impaired, while morbid impulsiveness frequently compels him to resort to homicidal or suicidal attacks. It is for this reason, no doubt, that both in French and Russian practice epileptic equivalents were recognized as conditions precluding criminal responsibility.

In American literature, too, the view that offenses committed by duly ascertained epileptics should not entail legal responsibility seems to be rapidly gaining ground. Dr. Glueck, for instance, makes this observation:

"Without thorough psychiatric examination a criminal act may be attributable to alcoholism, when in fact the epileptic basis is primary.

[34] Compare Stoddart's *Op. Cit.*, pp. 359–362.

Mental deterioration caused by progressive convulsive attacks frequently expresses itself not necessarily in a lack of knowledge of the nature, quality, and wrongfulness of an act, but in loss of general judgment capacity, and severe disturbances of the conative-affective life. . . . In brutal attacks, committed during maniacal states and epileptic equivalents, patients may appear to know the nature, quality and wrongfulness of their acts, yet be powerless to control them. The impulsive conduct caused in these conditions would not exempt from responsibility, where only the knowledge tests were in operation. With the irresistible-impulse and knowledge tests broadly interpreted to the jury, and provision for the concept of partial responsibility, the epilepsies would be sufficiently taken account of."[35]

Whatever be the form in which anti-social acts are committed by epileptics, criminology must distinctly bear in mind that three major symptoms of mental derangement are usually found to be associated with the genesis of the psychosis:

1. Deterioration of the integrative faculties of the mind;
2. The disintegration of the will-mechanism, as described in the opening paragraphs of the present chapter; and
3. Dissociated consciousness, especially noticeable in epileptic automatism.

When the criminalist has to face the practical problem of imputation as regards epileptics, it is his duty to insist that the alienist give him a detailed analysis of both the general psychic state of the offender (quantitative defect of the mind) and his particular pathologic condition, involving functional disintegration of the brain in its three principal ramifications.

It is only on the basis of such an exhaustive investigation that the question of criminal responsibility can be adequately determined in cases where an epileptic is found to be the author of the incriminated deed.

[35] *Op. Cit.*, p. 385. Dr. Healy apparently does not share this view. He says: "Our findings are conclusive that most of the delinquencies of epileptics are committed quite apart from any mental states which could be properly denominated complete insanity." He asserts also: "With the idea particularly expressed by Spratling . . . that 'unquestionably the gravest criminalistic result of epilepsy is the commission of assaults and inhuman crimes during the fit, or during the automatic state that immediately follows it,' we do not at all agree." *Op. Cit.*, p. 434.

224. Alcoholism and Crime. In these concluding pages no attempt will be made to discuss at length the question of the interrelation of alcoholism and criminality. The bibliography on this subject is immense, the problem having received equal attention on the part of criminalists and psychiatrists, economists and sociologists. DeQuiros, in his " Modern Theories of Criminality," mentions the fact that Abderhalden's list alone, pertaining to the different aspects of alcoholism, comprises more than 500 pages, with 15 to 20 titles on each.[36]

For our purpose it suffices, in the first place, to establish a few general premises which will then enable us to concentrate our attention only on those ramifications of alcoholism which legitimately belong to the anti-social nature of the phenomenon.

In this connection it may be remarked:

1. Alcoholism does not necessarily lead to crime, and should not be regarded as the underlying cause of criminality;

2. Criminality, while frequently accompanied by alcoholism, is in no way its equivalent, and the origin of both groups of phenomena may be altogether different;

3. Alcoholism is a relative conception; the degrees of toxic poisoning vary substantially, and, consequently, its quantitative and qualitative effects upon our mental function ought to be estimated on the merits of each individual case;

4. Despite the modern tendency to interpret alcoholism as a form of perverted sexualism, we maintain that no one single cause, or group of antecedents, is capable of furnishing a satisfactory explanation of the aetiology of the psychosis;

5. Alcoholism is manifestly affiliated with pauperism and economic destitution in general, in this way becoming an important problem for the sociologist to deal with. Nevertheless, the endeavor to make alcoholism dependent upon the economic factor alone is methodologically fallacious;

6. Alcoholism in its fully developed forms invariably produces deterioration of our reasoning faculties and causes the disintegration of the volitional apparatus with all the psycho-

[36] Abderhalden, "*Bibliographie der gesamten wissenschaftlichen Literatur über den Alkohol und den Alkoholismus,*" Berlin and Vienna, 1904, see DeQuiros' *Op. Cit.*, p. 198.

pathological states and pathogenic effects resulting therefrom.

225. **Statistical Data.** Abundant statistical data are available for the purpose of demonstrating the fact that alcoholism frequently does appear as one of the constituent factors of criminality.

Professor Olof Kinberg, of Stockholm, referring to the crimes committed by individuals convicted in Sweden and sentenced to prison terms during the year 1908, gives the following table:

I Crime	II *Number of those committed*	III *Number of those whose crime was committed in a state of intoxication*	IV *Number of those who have been alcoholics prior to their crimes and who have not committed same in a state of intoxication*	V *The figure referred to in column III in proportion to that given in column II*	VI *The figure indicated in column IV in proportion to that given in column II*
Rebellion	331	212	7	64.05	2.11
Domicile trespasses	93	79	8	84.95	8.02
Infliction of wounds	519	388	31	74.75	5.97
Homicide	20	17	1	85	5
Sexual Crimes	67	26	16	38.81	23.88
Theft	1,303	479	197	36.76	1.51
Swindling	126	19	18	15.08	1.42
Forgeries	96	13	20	13.54	20.83
Military transgressions	180	82	11	45.56	6.11[37]

The late Professor D.A. Dril, one of the prominent Russian criminologists, observed that in St. Petersburg, on the average, over 50% of all crimes, prior to the Revolution, were committed either by drunken individuals, or those suffering from alcoholism.[38]

The figures quoted by Robert L. Dugdale, in his "Jukes," show that in 1875, in most classes of criminality (burglary, larceny, robbery, murder, rape, arson, etc.), habitual drunkards

[37] See article by Professor Kinberg, entitled "*Alcool et Criminalité*," *Archives d'Anthropologie Criminelle*, p. 242, Vol. 28, 1913.

[38] Compare Professor D. A. Dril, "Inquiry into Criminality and the Measures of Combating It," pp. 412–420, St. Petersburg, 1912 (In Russian).

constituted a large percentage, while out of 191 crimes against property, 62 were committed by alcoholics. In cases where larceny from persons was examined, the percentage of habitual drunkards was as high as 55.[39]

On the other hand, Bonger, on the basis of figures taken from the annual reports of the Elmira Reformatory (State of New York) computed the following table which we quote here in extracts:

To Each 100 Prisoners

Year	*Parents Plainly Alcoholic*	*Parents Probably Alcoholic*
1881	33.8	18.0
1882	35.1	16.0
1883	35.6	14.1
1884	35.9	13.3
1885	36.4	12.8
1886	37.5	12.0
1888	38.4	10.0
1889	38.7	11.1
1890	38.4	11.4
1891	38.4	13.0
1892	38.3	13.1
1893	37.8	12.7
1894	37.5	12.1
1896	37.5	11.3
1897	37.6	51.7 (?)[40]

It is also undeniable that especially sexual crimes stand in close relation to the different forms and degrees of alcoholism.

In brief, then, it may be said that:

a. Crimes are often committed in a state of intoxication;

b. Crimes are frequently committed by persons who, although not intoxicated, are either alcoholics themselves or have alcoholism as a hereditary symptom; and

c. Some special types of criminality, like sexual offenses, are singularly apt to be perpetrated by alcoholics.

[39] *Op. Cit.*, p. 85.

[40] See Bonger's *Op. Cit.*, p. 500. Analogous data of France can be found in M. Yverne's article, "*l'Alcoholism et la Criminalité*," *Archives d'Anthropologie Criminelle*, Vol. 27, pp. 5–35, 1912.

226. **Alcoholism and Its Effect Upon the Mind.** The relative frequency of crimes committed by intoxicated persons is quite intelligible if it is taken into account that alcohol, even taken in moderate doses, necessarily affects the higher brain centers and, as Professor McDougall justly pointed out, weakens the inhibitory control of our lower functions.

On this subject the British Liquor Control Board gives the following well founded explanation:

" . . . of all the intellectual functions, that of self-criticism is the highest and latest development, for in it are combined the functions of critical judgment and of self-consciousness, that self-knowledge which is essential to the supreme activity we call volition or the deliberative will. It is the blunting of this critical side of self-awareness by alcohol, and the consequent setting free of the emotions and their instinctive impulses from its habitual control, that give to the convivial drinker the aspect and the reality of general excitement. In the mature well-developed mind the interplay of thought and emotion goes on under the checking and moderating influence of self-criticism; in social intercourse especially, it is constantly checked by the thought of the figure one cuts in the eyes of one's fellow men. In proportion, then, as alcohol hampers this process of self-control, the liberation of intellectual or emotional effects goes on at a higher rate."

Thus, there is a distinct correspondence between the toxic influence of alcohol and the different degrees of befogged consciousness. The stronger this influence, the more obscure is the work of the mental mechanism as a whole. The general pathologic condition further results in:

a. The weakening of the social propensity and the corresponding intensification of the egocentric emotions; and

b. The disintegration, even though temporary, of our will apparatus.

Naturally, in such a frame of mind, the individual is likely to attempt the commission of all kinds of anti-social acts which often assume the form of specific crimes.

227. **Alcohol as a Habit.** Whether alcohol be chemically a stimulant or semi-stimulant is a question which we shall not

examine here. Undeniably, however, it appears to the drinker as something comforting him, "relieving his mind," suggesting pleasurable anticipations, and, above all, eliminating some burdensome thought. In this way, it is hoped by the drinker to get rid of mental fatigue. The experiment having been tried several times, it is easily converted into a habit which it is all the more difficult to abandon, as the state of imaginary relief is but of short duration.

Moreover, systematic consumption of alcohol methodically undermines volition, with the result that, after a while, the individual can no longer resist the temptation of "taking a drink." He then becomes a habitual drinker.

228. **Chronic Alcoholism.** In much too many cases the intense desire to banish an oppressive thought into the dark realm of the unconscious, the endeavor to forget the dreadful things of life, like pauperism, for instance, or great mental shocks, are responsible for chronic alcoholism.

With a person of weak will the flight from reality which cannot be adequately met, becomes a psychic necessity; rather, a distinct psychosis.

There is no need for inventing intricate theories of "sexual introversion" and homosexual tendencies, in order to gain a clear understanding why there are so many alcoholics among the poorest strata in every country; why, — after the shocking catastrophies through which people, whether poor or rich, whether real gentlemen, like O'Malley of Shanganagh,[41] or miserable souls such as Dostoievsky's Marmeladov, — are dragged by fate, — they exhibit a conspicuous inclination towards dipsomania and kindred modes of habitual drinking.

When alcoholism becomes a chronic psychic derangement, it produces quantitative and functional defects of the mind. The particular form in which the psychosis outwardly expresses itself is a matter of the physical constitution of the patient and the amount of general vitality with which he is endowed. Now, like in Marmeladov, we find the chronic alcoholic suffering from the Korsakov disease, which sometimes is confused with alcoholic polyneuritis; now, — the effect of toxic

[41] Compare Donn Byrne's beautiful novel by that title, New York, 1925.

poisoning manifests itself in repeated attacks of delirium tremens; now, — in turn, it may appear in the form of pseudo-paresis, or in hallucinations and similar states of dissociated consciousness. Finally, in its fully developed condition, this type of insanity produces the complete destruction of all mental faculties and then it is called dementia. In this state the last sparks of consciousness are extinguished, and total obscurity envelops that which once used to be a human brain.

No special ingenuity is required to comprehend that these various psycho-pathological states furnish fertile ground for all sorts of anti-social impulsions which, in earlier stages of the disease, still find a counterpoise in the sum total of the social dispositions. But, gradually, as the stream of egocentric tendencies begins to swell, the system of moral self-defense weakens, and there comes a time, when "His Majesty Alcohol" establishes an iron grip over his victim; he rules him without pity or mercy, and the chronic alcoholic easily becomes a habitual criminal.

This, then, is the end of his earthly career, and he finds his last repose either in prison, or in the insane asylum.

APPENDIX I

Criminogenic Factors and Crimes

The Chart hereto annexed demonstrates the interrelation of the different criminogenic factors — both Social (I) and Psycho-Physical (II) — and the more important classes of crimes. These are divided, first, into two fundamental groups: *a*. crimes against the public order, and *b*. crimes against individuals. The latter group, in turn, is subdivided thus: 1. offenses against bodily safety, 2. sexual offenses, and 3. offenses against property. Most of the criminogenic factors enumerated in the Chart have been referred to, or discussed, in the text; for the convenience of the reader the paragraphs pertaining to these subjects are inserted in brackets. Thus, if it be desired to ascertain in what way, and why, either a social or a psycho-physical element enters into the aetiology of the particular crime, it is easy to find the place in the text dealing with the problem.

It should be remembered, however, that the causative connection between the two groups of phenomena (the criminogenic influences and the classes of crimes into which they project themselves) cannot be regarded as a fact established once and forever. In the field of the extremely intricate social phenomena no immanent relationships can ever be recorded.

For this reason it is quite conceivable that in specific instances the factors indicated in our Chart may produce not the anticipated form of anti-social conduct but some other manifestation of delinquency. Still, in a vast number of crimes it will be found that their origination stands in direct correlation with these criminogenic forces to which reference is made in the schedule. Besides, the author believes that in the study of criminality, as a social actuality, it is more useful to examine the *general tendencies* leading to the genesis of certain classes of delinquency, than to trace the causative foundations of the individual offense in which we always may be sure to find some peculiarities escaping the general principles of the formation of the criminal disposition.[1]

[1] Professor M. N. Gernet, the noted Russian criminologist, in his valuable work, "Crime and the Struggle Against it in Connection with the Evolution of Society" (1916), suggested this interesting classification of social factors bearing pronounced influence upon criminality:

Physico-Social Background	Urban life. Density of the population. Nutrition. Prostitution. Agricultural industry. Spread of education. Hygiene. Ways of communication.
Family Background	Mode of family life (monogamy, polyandry, polygamy). Social status and occupation of the family. Education.
Economic Background	Landowning. Industrial production. Wages and labor day. Pauperism. Rents and prices of necessities. Taxes. Banking credit.
Political Background	Political structure. Administrative apparatus. Public opinion. Political parties. The press. Legislation (penal, civil, commercial, electoral laws).

This scheme, while useful, does not give an exhaustive enumeration of the more important social factors, such as: revolution, social unrest, disintegration of religion, etc.

	OFFENSES AGAINST THE PUBLIC ORDER						
	Treason	*Military Desertion*	*Anarchy*	*Election Frauds*	*Bribery*	*Abuse of Authority*	*Vagabondage*
I. *SOCIAL FACTORS* (Part I, ch. I–VI, §§ 1–133)							
A. *General:*							
1. Lack of Traditions (ch. IV, § 78)					A1		
2. Disintegration of the Family (ch. IV, §§ 79–87)							A2
3. Prevalence of Materialistic Conceptions (ch. V, §§ 97, 102)				A3	A3		
4. Urbanization of Life (ch. II, § 34, ch. IV, § 79)		A4	A4	A4			A4
5. Disintegration of Religion—Low Standards of Morality—Neglect of Art (ch. IV, §§ 70–78, ch. V, §§97–99)	A5		A5	A5	A5	A5	
6. Social Unrest (ch. II, §§ 35, 42)	A6	A6	A6				
B. *Economics:*							
7. Pauperism (ch. III, § 63)							B7
8. Economic Instability (ch. III, §§ 64–66)							
(*a*) Unemployment			B8*a*				B8*a*
(*b*) Stock-Exchange Panics (ch. III, § 64)							
(*c*) Strikes			B8*c*				
(*d*) Violent Budget Fluctuations (ch. III, § 65)					B8*d*		
(*e*) Deflation of Currency							
(*f*) Violent Fluctuations in the Scales of Prices (ch. III, §§ 61, 62)							
9. Poor Housing Conditions							
C. *Political Status:*							
10. Revolution (ch. II, § 35, ch. VI, §§ 114–117)	C10	C10	C10		C10	C10	
11. After-war Effects (ch. VI, § 123)		C11			C11	C11	
12. Undue Government Interference with Private Life (ch. VI, § 119)					C12	C12	
13. Political Instability (See also Social Unrest) (ch. III, § 62)	C13	C13	C13		C13	C13	
14. Political Corruption (ch. VI, §118)	C14			C14	C14		
15. Inadequate Legislation:							
(*a*) Wide-spread public opposition to specific laws (ch. VI, §§ 116–118)				C15*a*	C15*a*	C15*a*	
(*b*) Absence of legal restrictions of the sale of poisons and firearms (ch. VI, §§ 121, 122)							
(*c*) Low standards of criminal detection and criminal registration (ch. VI, §§ 127, 128)							
(*d*) Inefficiency of criminal court procedure (ch. VI, §§ 127, 128)							
D. *Education:*							
16. Neglect in Family — Bad Family Examples (ch. IV, §§ 79–87)							D16
17. Bad School Associations (ch. II, §§ 31, 32)							D17

SUMMARY

Abuse of Power, A5, C10, C11, C12, C13, C14, C15*a*.
Anarchy, A4, A5, A6, B8*a*, B8*c*, C10, C13, D18*a*, D18*b*, D19*a*, D21, E1, E2, F8*c*.
Arson, C10, C13, E2.
Bribery, A1, A3, A5, B8*d*, C10, C11, C12, C13, C14, C15*a*.
Burglary, A2, A4, A5, A6, B7, B8*a*, B8*c*, B8*d*, B8*f*, C10, C11, C13, C15*c*, C15*d*, D16, D17, D18*c*, D19*a*, D20, E1, E2.
Castration, F5, F6, F8*d*.

OFFENSES AGAINST PRIVATE PERSONS (*individuals and legal entities*)

	Against Bodily Safety		*Sexual Crimes*					*Crimes Against Property*							
	Homicide	*Injuries*	*Murder*	*Castration*	*Rape*	*Incest*	*Exhibitionism*	*Theft*	*Burglary Robbery*	*Fraudul. Bkruptcy*	*Forgery*	*Frauds, Cheats*	*Extortion*	*Arson*	*Perjury*
I.															
1.												A1			A1
2.						A2		A2	A2						
3.								A3		A3	A3	A3			A3
4.								A4	A4	A4	A4	A4	A4		
5.					A5			A5	A5	A5	A5	A5			A5
6.	A6		A6		A6			A6	A6			A6			
B.															
7.								B7	B7			B7			
8.															
(*a*)		B8*a*							B8*a*			B8*a*	B8*a*		
(*b*)										B8*b*	B8*b*	B8*b*			
(*c*)		B8*c*							B8*c*						
(*d*)								B8*d*	B8*d*	B8*d*	B8*d*	B8*d*	B8*d*		
(*e*)										B8*e*		B8*e*			
(*f*)								B8*f*	B8*f*			B8*f*			
9.		B9			B9	B9	B9	B9							
C.															
10.	C10	C10			C10		C10	C10	C10			C10	C10	C10	C10
11.	C11	C11			C11			C11	C11	C11		C11			
12.											C12	C12			
13.	C13								C13	C13		C13		C13	
14.															
15.															
(*a*)											C15*a*	C15*a*	C15*a*		C15*a*
(*b*)	C15*b*	C15*b*	C15*b*												
(*c*)	C15*c*	C15*c*	C15*c*					C15*c*	C15*c*			C15*c*			
(*d*)	C15*d*							C15*d*	C15*d*			C15*d*			
D.															
16.					D16		D16	D16	D16			D16			D16
17.					D17			D17	D17			D17			

SUMMARY (Continued)

Election Frauds, A3, A4, A5, C14, C15*a*.
Exhibitionism, B9, C10, D16, E1, E4*a*, E4*c*, F5, F6, F7*a*, F7*b*, F7*c*, F8*a*, F8*b*, F8*c*, F8*d*, F8*e*.
Extortion, A4, B8*a*, B8*d*, C10, C15*a*.
Forgery, A3, A4, A5, B8*b*, B8*d*, C12, C15*a*, D18*b*, F8*d*.
Frauds, A1, A3, A4, A5, A6, B7, B8*a*, B8*b*, B8*d*, B8*e*, B8*f*, C10, C11, C12, C13, C15*a*, C15*c*, C15*d*, D16, D17, D18*a*, D18*b*, D18*c*, E1, E4*d*.

	OFFENSES AGAINST THE PUBLIC ORDER						
	Treason	*Military Desertion*	*Anarchy*	*Election Frauds*	*Bribery*	*Abuse of Authority*	*Vagabondage*
18. Fallacious Principles of Public Education: (*a*) Atheism (ch. V, § 98)			D18*a*				
(*b*) Unrestricted Materialism (ch. V, §§ 89, 102)	D18*b*	D18*b*	D18*b*				
(*c*) Moral Neglect (ch. V, § 98)							
19. Sensational Commercialized Press: (*a*) Advertisement of Crime (ch. V, § 105)			D19*a*				
(*b*) Advertisement of Sale of Firearms and Poisons (ch. VI, §§ 121, 122)							
(*c*) Sexual Advertisements (ch. V, §§ 106, 107)							
20. Morbid Literature and Art (Including Theaters, Moving Pictures Performances, etc.) (ch. V, § 110)							
21. Public Meetings stimulating social unrest and morally destructive		D21	D21				
II. *PSYCHO-PHYSICAL FACTORS* (Part II, ch. VII–IX, §§ 134–228)							
E. *Physical:*							
1. Morbid Heredity (Alcoholic-Syphilitic-Insanity) (ch. VII, §§ 142, 143)			E1				
2. Age, 16–20 (ch. V, § 100)		E2	E2				E2
3. Organ Inferiority (ch. VII, § 161)							
4. Physical Diseases and Anomalies: (*a*) Endocrynopathies (ch. VII, §§ 160–161)							
(*b*) Deaf-Muteness—Blindness—Gibbosity, etc. (ch. VII, §§ 160–161)							E4*b*
(*c*) Anomalies of the genital organs (ch. VII, § 161)							
(*d*) Venereal Diseases							E4*d*
F. *Psychic:*							
5. Suppression and Perversion of Instincts (ch. VII, § 167)							
6. Disintegration of the Volitional Mechanism (ch. IX, §§ 199–201)							
7. Quantitative Defects of the Mind: (*a*) Imbecility—Idiocy—Cretinism (ch. IX, §§ 209, 210)							
(*b*) Dementia Senile—Neurosyphilis—Paresis, etc. (ch. IX, § 207)							
(*c*) Fully Developed Alcoholism (ch. IX, §§ 224–228)							F7*c*
8. Functional Derangements of the Mind: (*a*) Neurasthenia (ch. IX, § 202)							
(*b*) Hysteria (ch. IX, § 204)		F8*b*					
(*c*) Epilepsy (ch. IX, §§ 219–223)			F8*c*				
(*d*) Obsessional Psychoses (Paranoia, Manias, etc.) (ch. IX, § 205)							
(*e*) Dementia Precox (ch. IX, §§ 217, 218)							

SUMMARY (Continued)

Fraudulent Bankruptcy, A3, A4, A5, B8*b*, B8*d*, B8*e*, C11, C13, D18*b*, E2.
Homicide, A6, C10, C11, C13, C15*b*, C15*c*.
Injuries, B8*a*, B8*c*, B9, C15*d*, D18*a*, D18*b*, D18*c*, D19*a*, D19*b*, E1, E2, E3, E4*c*, F6, F8*a*, F8*b*, F8*c*, F8*d*.
Incest, A2, B9, D18*a*, F7*a*.
Military Desertion, A4, A6, C10, C11, D18*b*, D21, E2, F8*b*.
Perjury, A1, A3, A5, C10, C15*a*, D16, D18*a*, D18*b*, F7*c*, F8*a*, F8*b*, F8*d*.

OFFENSES AGAINST PRIVATE PERSONS (individuals and legal entities)

	Against Bodily Safety		*Sexual Crimes*					*Crimes Against Property*								
18.	*Homicide*	*Injuries*	*Murder*	*Castration*	*Rape*	*Incest*	*Exhibitionism*	*Theft*	*Burglary Robbery*	*Fraudul't Bankruptcy*	*Forgery*	*Frauds, Cheats*	*Extortion*	*Arson*	*Perjury*
(*a*)	D18*a*					D18*a*						D18*a*			D18*a*
(*b*)	D18*b*									D18*b*	D18*b*	D18*b*			D18*b*
(*c*)	D18*c*				D18*c*			D18*c*	D18*c*			D18*c*			
19. (*a*)	D19*a*							D19*a*	D19*a*						
(*b*)	D19*b*														
(*c*)			D19*c*		D19*c*										
20.			D20		D20			D20	D20						
21.															
II. E. 1.	E1		E1		E1		E1	E1	E1			E1			
2.	E2	E2	E2		E2				E2	E2				E2	
3.	E3		E3		E3										
4. (*a*)							E4*a*								
(*b*)					E4*b*			E4*b*							
(*c*)		E4*c*					E4*c*								
(*d*)			E4*d*									E4*d*			
F. 5.			F5	F5	F5		F5								
6.	F6		F6	F6			F6	F6							
7. (*a*)					F7*a*	F7*a*	F7*a*	F7*a*							
(*b*)							F7*b*	F7*b*							
(*c*)					F7*c*		F7*c*	F7*c*							F7*c*
8. (*a*)	F8*a*	F8*a*					F8*a*								F8*a*
(*b*)	F8*b*	F8*b*			F8*b*		F8*b*								F8*b*
(*c*)	F8*c*		F8*c*		F8*c*		F8*c*	F8*c*							
(*d*)	F8*d*		F8*d*	F8*d*	F8*d*		F8*d*	F8*d*			F8*d*			F8*d*	F8*d*
(*e*)							F8*e*	F8*e*							

SUMMARY (Continued)

Rape, A5, A6, B9, C10, C11, D16, D17, D18*c*, D19*c*, D20, E1, E2, E3, E4*b*, F5, F7*a*, F7*c*, F8*b*, F8*c*, F8*p*
Sexual Murder, A6, C15*b*, C15*c*, D19*c*, D20, E1, E2, E3, E4*d*, F5, F6, F8*c*, F8*d*.
Theft, A2, A3, A4, A5, A6, B7, B8*d*, B8*f*, B9, C10, C11, C15*c*, C15*d*, D16, D17, D18*c*, D19*a*, D20, E1, E4*b*, F6, F7*a*, F7*b*, F7*c*, F8*c*, F8*d*, F8*e*.
Treason, A5, A6, C10, C13, C14, D18*b*.
Vagabondage, A2, A4, B7, B8*a*, D16, D17, E2, E4*b*, E4*d*, F7*c*.

APPENDIX II

The Baumes Law

Below is reproduced the full text of the Baumes Law which amended Sections 1941 and 1942 of the Penal Law of the State of New York. The Act took effect on July 1, 1926. It is too early to judge what practical significance the amendments will bear upon the rate of professional criminality in the State of New York; it is likely, however, that habitual offenders will seek to shift their activities to other densely populated urban centers of the United States in which the fourth conviction is not punished by life imprisonment.

AN ACT to amend the penal law, in relation to second and subsequent offenders and their resentencing.

Became a law April 16, 1926, with the approval of the Governor. Passed, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section nineteen hundred and forty-one of the penal law, as last amended by chapter five hundred and seventy-one of the laws of nineteen hundred and twenty, is hereby amended to read as follows:

§ 1941. *Punishment for second offense of felony.* A person, who, after having been convicted within this state, of a felony, or an attempt to commit a felony, or, under the laws of any other state, government, or country, of a crime which, if committed within this state, would be a felony, commits any felony,[1] within this state, is punishable upon conviction of such second offense, as follows:

If the subsequent felony [1] is such that, upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life, then such person must be sentenced to imprisonment for a term not less than the longest term, nor more than twice the longest term, prescribed upon a first conviction.

§ 2. Section nineteen hundred and forty-two of the penal law is hereby amended to read as follows:

[1] Word "felony" substituted for word "crime."

§1942. *Punishment for fourth conviction of felony.* A person who, after having been three times convicted within this state, of felonies or attempts to commit felonies, or under the law of any other state, government or country, of crimes which if committed within this state would be felonious, commits a felony within this state, shall be sentenced upon conviction of such fourth, or subsequent, offense to imprisonment in a state prison for the term of his natural life.[2] A person to be punishable under this and the preceding section need not have been indicted and convicted as a previous offender in order to receive the increased punishment therein provided, but may be proceeded against as provided in the following section.

§ 3. The said penal law is hereby further amended by adding thereto a new section to be known as section nineteen hundred and forty-three thereof and to follow section nineteen hundred and forty-two and to read as follows:

§ 1943. *Procedure relating to resentencing.* If at any time, either after sentence or conviction, it shall appear that a person convicted of a felony has previously been convicted of crimes as set forth either in section nineteen hundred and forty-one or nineteen hundred and forty-two, it shall be the duty of the district attorney of the county in which such conviction was had to file an information accusing the said person of such previous convictions. Whereupon, the court in which such conviction was had shall cause the said person, whether confined in prison or otherwise, to be brought before it and shall inform him of the allegations contained in such information and of his right to be tried as to the truth thereof according to law, and shall require such offender to say whether he is the same person as charged in such information or not. If he says he is not the same person or refuses to answer, or remains silent, his plea, or the fact of his silence, shall be entered of record and a jury shall be empanelled to inquire whether the offender is the same person mentioned in the several records as set forth in such information. If the jury finds that he is the same person or if he acknowledges or confesses in open court, after being duly cautioned as to his rights, that he is the same person, the court shall sentence him to the punishment prescribed in said sections nineteen hundred and forty-one and nineteen hundred and forty-two, as the case may be, and shall vacate the previous sentence, deducting from the new sentence all time actually served on the sentence so vacated. Whenever it shall become known to any warden or prison, probation, parole, or police officer or other peace officer that any person charged

[2] Remainder of section materially amended.

with or convicted of a felony has been previously convicted within the meaning of said sections nineteen hundred and forty-one or nineteen hundred and forty-two, it shall become his duty forthwith to report the facts to the district attorney of the county.

§4. This act shall take effect July first, nineteen hundred and twenty-six.

GLOSSARY

Acetic Acid — liquid with a strong acid taste and a peculiar sharp smell.

Affective Tonality — the tone of feeling accompanying sensation (pleasant or unpleasant).

Agnosticism — form of incredulity; the conception maintaining that neither the universal plan nor the existence of God is knowable.

Alimentary Canal — the canal extending from the mouth to the anus whose function is the digestion and absorption of the nourishment for the whole body (Webster). A. C. is a combined group of organs (stomach, small and large intestines, rectum, etc.).

Ambivalency — in modern psychology the law of conflicting tendencies, action and reaction, or the psychic oscillation between two diametrically opposed psychological conditions.

Amentia — mental deficiency such as idiocy and imbecility.

Amnesia — pathological loss of memory.

Amœba — a one-cell organism.

Anabolism — in biology, a series of chemical changes in living cells, the purpose of which is to build the protoplasm.

Anthropoids — in anthropology and zoölogy, term applied to apes resembling man. The highest cranial capacity of A. is 600 cc., while that of the average Pigmy is 900 cc.

Anthropometry — system of the measurement of the human body. Bertillon introduced A. in the field of the registration of criminals; this method is being everywhere gradually superceded by dactiloscopy, or fingerprint recording.

Atavism — " reappearance of a character after a lapse of one or more generations." (A. F. Shull.) A. is the renewed manifestation of the genetic factor after a more or less protracted period of latency.

Ataxy (or ataxia) — in medicine, lack of coördination of muscular movements, such as we perceive in the mechanism of writing among diabetics, and so forth.

Aura — in epilepsy, warning immediately preceding the *grand mal* (Vide), usually of sensory nature; the epigastric aura and hallucinations are among the most common aurae.

Automatism — in psychology, a condition whereby any act, thought or emotion is produced without the participation of the volitional apparatus; A. is often observed in the behavior of mentally diseased; thus, we speak of post-epileptic automatism.

Axis Cylinder — in neurology, the focal or central portion of nerve fibers whose function it is to transmit nervous impulses to the dendrites of the neurons. (Vide, also, " Neurons.")

Behaviorism — a school in modern psychology which limits its study to those phenomena in the behavior of the human animal which can be observed; in this sense, B. claims to be " objective psychology."

Benzol — mixture of hydrocarbons of the benzene series.

Bestiality — violation of animals; perversion, both among men and women, leading to sexual intercourse with animals.

Binet-Simon Tests — psychological tests mostly applied to measure the scale of intelligence among children and mental defectives elaborated by Alfred Binet and Thomas Simon in the early part of the XX Century.

Brachycephalism — the condition of short-headedness.

Caesura — break in a verse.

Cardiology — the branch of science which examines the structure and functions of the heart.

Catalysis — in chemistry, acceleration of reactions due to the presence of a neutral substance, or catalytic agent. Thus, the decomposition of hydrogen peroxide into oxygen and water is accelerated by spongy platinum; equally, hydrochloric acid accelerates the hydrolysis of cane sugar.

Cerebellum — the little brain consisting of two lateral lobes and a median lobe.

Choregraphy — art of dancing.

Chromatin — " an easily stained substance in the nucleus of a cell, believed to determine inherited characters, physiological activities, etc." (A. F. Shull.) The chemical substance of C. is largely composed of proteid compounds of nucleic acid.

Colloids — substances which, in solution, are incapable of diffusing through membranes and which cannot be obtained in the crystalline state. C. are distinguished from crystalloids. (Vide.)

Complex — in psychology and psychiatry, a system of " emotionally toned ideas tending to produce actions of a certain definite character." (B. Hart.) C's banished from consciousness often manifest a strong tendency to reappear in the ideational content.

Conation — psychic state the intrinsic nature of which is dynamic or volitional. J. S. Mill does not distinguish between the conception of conation and that of will or desire.

Corpus Delicti — the sum total of conditions requisite to the consummation of a crime; " that, the commission of which must be established, before the accused can be legally convicted." (W. C. Cochran and H. L. Bevis.)

Cortex — the outer layer of gray matter of the cerebrum and cerebellum.

Criminaloids — in the Lombrosian sense, occasional delinquents who commit ordinary crimes and whose physical and psychic constitution presents abnormality in lesser degree than in born-criminals.

Crystalloid — a substance which, in solution, is capable of being crystallized.

Culpa in Faciendo — in Roman law, perpetration of something a person was in duty bound to refrain from.

Culpa in Omittendo — in Roman law, failure to undertake, or do something, which a person was in duty bound to undertake.

Dactyloscopy — method of identification by comparison of finger-prints.

Diabetes — "a constitutional disease, characterized especially by hypersecretion of urine highly charged with sugar." (Gould and Pyles.)

Determinism — in philosophy, the theory claiming that will is not free but strictly determined by either physical or psychic conditions.

Dipsomania — periodical impulse to consume alcohol. D. sometimes appears as a symptom in epilepsy, but more generally belongs to the group of so-called "toxic psychoses."

Dissociation of Consciousness — "the division of the mind into independent fragments which are not coördinated together to attain some common end." (B. Hart.) D. C. may manifest itself in various forms, constituting either a temporary and only partial condition, or a profound and complete disintegration of the psychic apparatus, like in the developed forms of hysteria and somnambulism.

Dominant Character — in biology, "a character possessed by one of two parents of hybrids (Vide) which appears in the hybrids to the apparent exclusion of the antagonistic character" (Webster). This principle was discovered by Mendel as the result of cross-fertilization of plants presenting sharply contrasted characters, such as tallness and dwarfness in two different strains of peas.

Duplicity (or duplication of character) — in psychiatry, sharp dissociation of the personality, like in somnambulism.

Electrons (or corpuscles) — in chemistry, particles in hydrogen atoms. E. are sometimes supposed to rotate around the atom; the prevailing view, however, seems to be that E. entering into the atomic structure and associated with its nucleus are more or less stationary; vibrating within a range which is narrower than the atomic diameter. (Professor E. B. Millard.)

Emys Europaea — European turtle.

Endocrine Organs — designed to secrete substances to be used in or eliminated from the body; glands, simple and compound, ductless, thyroid (Vide) etc.

Epileptoids — a clinical group resembling epileptics. "So called epileptoid attacks form one of the most universal and commonest symptoms in the group of diseases which we reckon among the mental diseases and neuropathics." (C. Westphal.) E. stand very close to the hysterical group.

Erogenous Zone — the zone productive of sexual excitement.

Frigidity — condition of being cold; in sexual life, especially among women, F. means aversion to normal sexual intercourse, be it as the result of deliberately suppressed instincts or because of the growth of fear (in anticipation of pregnancy, etc.). Sometimes F., both among men and women, is accompanied by a complete loss of hetero-sexual potency and the development of homosexual tendencies.

Gnosiology — in philosophy, theory of the nature and validity of knowledge.

Gnosticism — in philosophy, that school of thought (I Century) which sought to explain nature in its manifoldness as a result of emanation from God. G. stood in opposition to the teachings of orthodox Christianity.

Grand Mal — in epilepsy is the act of falling accompanied by convulsion and complete obliteration of consciousness.

Graphomania — form of obsession consisting in an irresistible desire to write, often associated with litigious mania (paranoia querulans).

Hammerschlag Test — in bio-chemistry for the determination of the specific gravity of the blood by means of the chloroform-benzol solution in which a drop of blood is suspended.

Histology — science dealing with the animal and vegetable tissues, and their structure. The inquiry into the nature of these phenomena can be achieved only with the aid of the microscope. Hence, H. is sometimes called *microscopic anatomy*.

Homiletics — that part of theology which deals with the art of elaborating sermons.

Homosexualism — "perverse feeling for the same sex." (R. Krafft-Ebing), usually accompanied by actual sexual intercourse between persons of the same sex. H. may be both a congenital and acquired condition, and is often a symptom of profound disorders of the mind.

Hybridization — process of bringing up crossbred offsprings among animals and plants. *Hybrids* are "offsprings of two parents differing in one or more respects" (A. F. Shull); more specifi-

cally, offspring of the mating of a male of one race variety or species with a female of another; hence, hybridization, for instance, of Norwegians and Lapps, or Russians and Bashkirs.

Hydrocephalus — a disease of the brain; excessive accumulation of cerebrospinal fluid in the ventricles, resulting in the retardation of mental development, general weakness, and convulsions. It develops usually between the ages of 1 and 5.

Hydrofluoric Acid — chemical symbol H_2F_2; compound of hydrogen and fluorine.

Hydrogen — chemical symbol H, a gaseous insolvent element, colorless and tasteless.

Ideation — a term that can be used both in connection with the function of forming ideas and their content. "The physiological difference between perception and ideation is that *percepts* are aroused by stimulation of the corresponding sensory end-organ, while ideas are aroused by way of association fibers" (Professor W. H. B. Stoddart).

Infantilism — mental or physical underdevelopment encountered in different modes of feeblemindedness.

Infra-red — rays in the thermal spectrum, invisible to the eye.

Inhibition — in psychology, restraint of a psychic state or emotion in consequence of another psychic state or range of emotions. The restraint can be caused by a volitional effort on the part of the individual himself, as in the case of inhibition of fear by a mental effort to suppress it, or by subconscious temperamental dispositions, as in the restraint of certain instincts; or by the exercise of some outside psychic influence, as in hypnotic states.

Iron-Oxide — compound of oxygen and iron.

Katatonia (or Catatonia) — in psychiatry, a variety in the schizophrenic group (Vide). The disease assumes three principal forms: Katatonial depression (classical form), Katatonial stupor and Katatonial excitement.

Korsakov Disease — in psychiatry, a psychosis associated with chronic alcoholism and affecting the central nervous system in its entirety, accompanied by states of delirium.

Libido — in modern psychology, the sexual principle which in its development usually assumes different forms and outward manifestations. In a broader sense L. is the vital energy, or that which Bergson calls *élan vital.*

Macrocosm — the universe.

Mala in se — wrongs in themselves, as distinguished from *Mala prohibita* which are acts specifically prohibited by the law.

Masochism — association of sexual desire with submission to cruelty and violence (Aug. Forel).

Medulla — lowest part of the brain continuous with the spinal cord.

Megalomania — form of insanity characterized by the patient's grandiose mania or delusion.

Mental Trauma — in modern psychology, psychic wound usually caused by some dreadful or unpleasant event in which a person participated. The after-effects of M. T. may vary considerably, sometimes leading to mental disturbances. Freud, originally, sought to reduce the nature of M. T. to sexual shocks, experienced in childhood; however, at present this hypothesis is no longer held true.

Metatarsus — the five elongated bones between the flat of the foot and the phalanges.

Microcosm — little world, as though existing by itself.

Mongolism — form of physical degeneracy, distinguished from cretinism.

Morphology — science treating of the forms of plants and animals and their development.

Myelin — in physiology and bio-chemistry, a fatty substance in medullated nerve fibers; its chemical nature is not yet quite determined, but it contains proteid matter, cerebrin and other materials. The process of myelinization of the cortical zones, according to Flechsig and Bechterew, lasts from the seventh month of the intra-uterine period to the fifteenth month after the child's birth. The myelogenetic sphere, chronologically, is divided into 36 fields: primary — 1-10; intermediary 11-31; terminal — 31-36.

Narcissism — sexual perversion expressing itself in unnatural admiration for one's own physical attributes. The term is derived from Narcissus who, according to the myth, fell in love with his own reflection in the water of a brook.

Necrophalia — sexual perversion resulting in the desire to have intercourse with a corpse. Krafft-Ebing and Maschka believe that N. is a form of insanity.

Negativism — in psychiatry, "a curious condition in which any suggestion made to the patient at once arouses the counter-suggestion" (W. H. B. Stoddart). In a broader sense, a pronounced negative attitude of the mind toward the reality of life. N. as a psycho-pathologic condition is often observed in Katatonia (Vide), epilepsy, etc.

Neuron — a nerve cell consisting of a cell body and a number of prolongations; the longest prolongation is known as the axon, while the others are dendrites. The main function of N's is transmission and coördination of the responses to sensory stimuli from one part of the body to other parts.

Nitrogen — chemical symbol N.; a gaseous and colorless element, also called *Azote*.

Ontogenetic Evolution — development or process of growth of the individual organism.

Orgiasm — orgiastic action.

Oxycephaly — sugar-loaf shape of the skull often observed in paralytic types.

Paraesthesia — disordered sensation often observed among the insane (hallucinations, illusions, etc.).

Paresis — in psychiatry, disease of the nervous system of syphilitic origin, accompanied by delusions and imperceptions. "Dream world and real world become hopelessly confused in this fundamental psychic crumbling." (Jelliffe and White.)

Petit Mal — partial obliteration of consciousness in epilepsy, usually, but not necessarily, accompanied by incomplete seizures.

Phrenology — erroneous hypothesis set forth by F. J. Gall (1758–1828) to the effect that the shape of the skull determines the character traits and vocational faculties of the individual. It is an established fact at present that the shape of the skull and its irregularities do not coincide with the shape of the brain, and that brain localization, in most cases, cannot be experimentally proved.

Phtisis — in medicine, pulmonary tuberculosis.

Plumbism — lead poisoning.

Polyneuritis (or multipleneuritis) — in neurology, inflammation of the peripheral nerves, often, though not always, of alcoholic origin; the symptoms of P. are similar to those observed in the Korsakov disease (Vide).

Positivism — philosophical system originated by Aug. Comte (1798–1857) and formulated in his *Cours de Philosophie Positive* which came as a reaction against Kant and his school. P. deals exclusively with natural things and properties.

Prognathism — in zoölogy and anatomy, projection of the upper jaw beyond the general plane of the face.

Pseudographia — incoherent writing often observed among insane patients, especially those suffering from katatonia (variety of dementia precox), general paralysis and aproxia. Occasionally, marked ideational inertia can be detected in P.

Psychism — psychic element or psychic nature.

Psycho-Genesis — the origination of the psychic faculty, a biological process in the course of which innate tendencies and blind responses of the organism to stimuli develop into states refracted in and integrated by consciousness.

Pyramidal Fibers — group of fibers in the medulla; the nutrition center of the pyromidal paths, according to Bechterew, is located in the circumvolutions of the brain. P. F. correspond to the different motor centers of the cortex.

Pyromania — morbid impulse to incendiarism, often encountered among children, more particularly, girls.

Ratiocination — in logic equivalent to syllogism. "All ratiocination . . . starts from a *general* proposition, principle, or assumption: a proposition in which a predicate is affirmed or denied of an entire class; that is, in which some attribute, or the negation of some attribute is asserted of an indefinite number of objects distinguished by a common characteristic and designated in consequence by a common name." (J. S. Mill.)

Recessive — in genetics, "incapable of being produced when the factor for a contrasted character is also present" (A. F. Shull); distinguished from dominant (Vide).

Relativity — in mathematics, the theory of relativity as elaborated by Einstein, Lorentz, Axenov and Minkowski — repudiates the traditional conception of time and space as absolute entities, making them in every instance relative to moving systems.

Renaissance (Italian — *Rinascimento*) — cultural movement dating back to the end of the XV and beginning of the XVI Centuries marked by the revival of the classical traditions in Art and Literature. (Italy, France.)

Rickets (or Rachitis) — in medicine, a disease among young children characterized by poor nutrition, deformities of the bones and various neuro-pathologic symptoms.

Sadism — form of sexual perversion which associates sexual desire with cruelty, violence and in extreme cases leads to the infliction of death. "True sadism can only become effective by the combination of two causes: (1) by an exalted and absolutely pathological association of sexual desire with a sanguinary instinct, and with the desire to illtreat and overcome a victim, (2) by an almost absolute absence of moral sense and sympathy, combined with a violent and egoistic sexual passion." (A. Forel.)

Schizophrenia (or dementia precox) — term suggested by Bleuler to describe all mental diseases entailing a splitting of personality. This fundamental symptom is caused by associative disturbance, or the lack of coördination between the receptive and effective functions of the mind.

Scrofula (also Lymphadenitis) — in medicine, disease of the lymphatic glands, their degeneration; glandular tumors of tubercular origin.

Sensorium — the organs of sense forming part of the nervous system.

Septum Lucidum — in anatomy, the double partition separating the lateral ventricles of the brain.

Sinus — cavity in which pus is collected; the general symptoms of Sinus thrombosis are those of infection. "Chills and fever, and

with the breaking down of liquefication of the thrombus (clot composed of blood elements) and its distribution in the general circulation, there may be pylmia (blood poisoning), with abscess formation" (S. E. Jelliffe and Wm. A. White).

Spermatozöon — in biology, "a minute, active germ cell produced by a male animal" (A. F. Shull). The function of S. is the fertilization of the egg.

Sulphuric Anhydride — chemical symbol H_4 SO_5.

Surplus Value — according to the Marxian theory the difference between the cost of labor and the selling cost of the manufactured product, representing the profit of the capitalist, entirely created by labor.

Syncretism — in philosophy and religion, the endeavor to establish accord between conflicting theories and dogmas.

Syndrome — in medicine, a group of symptoms, usually a pathologic nature, occurring together (cyclic syndromes, neuro-vegetative syndromes, etc.).

Tabes (or locomotor ataxia) — in medicine, a disease of the nervous system characterized by motor incoördination (staggering gait, inability to walk, absence of knee-jerk, etc.). Believed to be of syphilitic origin.

Thalamus — the place where a nerve originates.

Theodicy — that branch of theology which treats of the dealings of Divine Providence, and their vindication in relation to the freedom of human will and the principle of wrong.

Thyroid Gland — a gland filled with colloid substance (iodothyrin); it is found in all classes of craniate vertebrates. "The thyroid is developed by immediate outgrowth from the entoderm lining the floor or the pharynx, at a level between the first and second branchial pouches." (J. J. R. Macleod.) The atrophy of T. G. results in the condition of cretinism.

Toxicology — science inquiring into the nature of poisons, their effects, symptoms accompanying poisoning, etc., forming an essential part of pharmacopœia and legal medicine.

Trance — temporary suspension of sensation and retirement of consciousness, similar to a dream state; catalepsy.

Transcendental — in Kantian philosophy, that which lies beyond empirical or experimental knowledge.

Tropisms — innate faculty of lower organisms to react in strictly definite modes to external stimuli, such as light (photo-tropism), gravitation (geo-tropism), chemical excitations (chemo-tropism).

Ultra-Violet Rays — outside the visible spectrum; they lie beyond the deepest violet.

Ureamia — in psychiatry, a toxic psychosis very similar in its symptoms to epilepsy, inclusive of localized convulsions.

Vegetative System — " relates to various organs of the body for the purpose of the upkeep of the machine. The activities of the vegetative nervous system render the satisfaction of organic bodily needs possible and thus may be said to build up affective or emotional attitudes of the various types of well-being in separate segments of the body." (S. E. Jelliffe and Wm. A. White.)

Verbal Portrait (in French " *Portrait Parlé* ") — method of anthropometrical classification based upon the most striking and more or less constant physical characteristics, such as the shape of the nose, ear, mouth, forehead, etc.

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